TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 146.

OAKES AMES, OLIVER AMES, Jr., OAKES A. AMES, FRED-ERICK AMES, AND OLIVER AMES, 3d, PLAINTIFFS IN ERROR,

vs.

ICHABOD L. QUIMBY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED SEPTEMBER 29, 1873.

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1 UNITED STATES OF AMERICA:

To the honorable judges of the Supreme Court of the United States:

Having examined the records and files of the circuit court of the United States for the sixth judicial circuit and western district of Michigan, in a case wherein Ichabod L. Quimby is plaintiff, and Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick L. Ames, and Oliver Ames, 3d, are defendants, we find the following, to wit:

2 STATE OF MICHIGAN,
County of Kent, ss:

The circuit court for the county of Kent, in the name of the people of the State of Michigan, to the sheriff of the county of Kent, greeting:

{ COPY SEAL. } You are commanded to summon Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3d, to be and appear before the circuit court of the county of Kent, at the court-house in the city of Grand Rapids, Michigan, upon the 6th day of August, A. D. 1872, then and there to answer unto Ichabod L. Quimby in a plea of trespass on the case upon promises, damage twenty thousand dollars, which shall then and there be made to appear; and of this writ make due return.

Witness the honorable Birney Hoyt, circuit judge of the said circuit court, at Grand Rapids, this 16th day of July, A. D. one thousand eight hundred and seventy-two.

HOBART H. CHIPMAN, *Clerk.*

NORRIS & BLAIR,
Plaintiff's Attorneys.

3 STATE OF MICHIGAN:

The circuit court for the county of Kent.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, JUNIOR, OAKES A. Ames, Frederick L. Ames, and Oliver Ames, 3d.

KENT COUNTY, *ss:*

Ichabod L. Quimby, of Grand Rapids, in said county, being duly sworn, says that he is the above-named plaintiff, and that a personal action, arising upon contract, has been commenced by the above-named plaintiff against Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick L. Ames, and Oliver Ames, 3rd, who are copartners, under the firm-name of Oliver Ames and Sons, defendants, above named, and non-residents of the State of Michigan, and residents of the State of Massachusetts, in the circuit court for the county of Kent, by summons issued out of and under the seal of said court.

This affiant further says that the said Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick L. Ames, and Oliver Ames, 3rd, the defendants, are justly indebted to the said plaintiff in the sum of

4 eleven thousand dollars, over and above all legal set-offs, and that said plaintiff is justly apprehensive of the loss of the same unless a writ of garnishment issue to Wilder D. Foster, of said city of Grand Rapids, Kent County, and State of Michigan.

And that this affiant has good reason to believe, and does believe,

that the said Wilder D. Foster has property, money, goods, chattels, credits, and effects in his hands and under his control belonging to the said Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick L. Ames, and Oliver Ames, 3rd, and that the said Wilder D. Foster is justly indebted unto the said Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick L. Ames, and Oliver Ames, 3rd, copartners as aforesaid, and that the said indebtedness is now due.

(Signed) ICHABOD L. QUIMBY.

Subscribed & sworn to before me this 10th day of July, A. D. 1872.

C. M. McLAREN,
Notary Public, Kent County, Michigan.

5 STATE OF MICHIGAN,
County of Kent, ss:

The circuit court for the county of Kent, in the name of the people of the State of Michigan, to the sheriff of the county of Kent, greeting:

Whereas I, Ichabod L. Quimby, as plaintiff, has commenced a personal action, arising upon contract, in the circuit court for the county of Kent, against Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3rd, as defendants, by summons issued out of and under the seal of said court, and has filed in the office of the clerk of said court the affidavit of the said plaintiff, stating, amongst other things, that he has good reason to believe, and does believe, that Wilder D. Foster, of the city of Grand Rapids, Kent County, Michigan, has property, money, goods, chattles, credits, and effects in his hand and under his control belonging to the said defendants, and that the said Wilder D. Foster is justly indebted to the said defendants, and that said indebtedness is now due, and that said defendants are justly indebted to the said plaintiff in the sum of eleven thousand dollars, over and above all legal set-offs, and that the said plaintiff is justly apprehensive of the loss of the same unless a writ of garnishment issued to the aforesaid Wilder D. Foster:

Now, therefore, you are hereby commanded to warn and summons the said Wilder D. Foster to appear before said court, on Tuesday, the sixth day of August, A. D. 1872, to make disclosure in writing, under oath, to be filed with the clerk of said court, touching the liability of said Wilder D. Foster as garnishee of Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3d, the principal defendants, as charged in the said affidavit, and that said Wilder D. Foster thenceforth pay no money and deliver no property or effects to the said Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3d, defendant in said action, until discharged.

And of this writ you shall make due return to the said circuit court on the sixth day of August next.

Witness the Hon. Burney Hoyt, circuit judge, at the city of Grand Rapids, this sixteenth day of July, one thousand eight hundred and seventy-two.

[L. S.] HOBART H. CHIPMAN, *Clerk*,
By W'M H. VAN LEEWOREN, J'R, *Dept.*

STATE OF MICHIGAN,
County of Kent, ss:

I hereby certify and return that on the 16th day of July, A. D. 1872, in said county, I served the within writ upon Wilder D. Foster, the gar-

nishee therein named, by showing the same to Wilder D. Foster, and at the same time delivering to Wilder D. Foster a true copy of said writ.

Dated this 16th day of July, 1872.

JESSE F. WYCKOFF,
Sheriff of said County,
By D. F. THURSTON,
Under Sheriff.

FEES.—Service of writ, ; milage, ; copies, $1.10.

6 STATE OF MICHIGAN:

The circuit court for the county of Kent.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick L. Ames, and Oliver Ames, 3rd.

Wilder D. Foster, who has been warned and garnished by summons issued in the above cause, comes into this court, and for disclosure, according to the form of the statute in such case made and provided, says that he did at the time of the issuing of the summons have property, goods, and effects in his hands, and under his control, belonging to the said defendants, of the value of thirteen hundred ninety-eight and $\frac{43}{100}$ dollars, (1,398 $\frac{43}{100}$,) being balance due from this deponent to said defendants upon account stated under the firm-name of Oliver Ames & Sons.

(Signed) WILDER D. FOSTER.

KENT COUNTY, *ss:*

7 Wilder D. Foster, the garnisher above named, being duly sworn, says that he has read the foregoing disclosure, by him subscribed, and knows the contents thereof, and that the same is true in substance and matter of fact.

(Signed) WILDER D. FOSTER.

Subscribed and sworn to before me this 13th day of August, A. D. 1872.

WILDER D. STEVENS,
Notary Public, Kent County, Michigan.

8 STATE OF MASSACHUSETTS,
County of Suffolk, ss:

Isaiah Paine, j'r, being duly sworn, says that on the 23rd day of July, A. D. 1872, he served on Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick L. Ames, and Oliver Ames, 3rd, a true copy of the summons, affidavit, and writ of garnishment, with return of service thereon endorsed, of which the attached are true copies, together with a written notice signed by Norris and Blair, attorneys for the plaintiff named in said summons, of which notice that hereto attached is a true copy, by delivering the same to each of the defendants named in said summons in said State of Massachusetts.

(Signed) I. PAINE, J'R.

Subscribed and sworn to before me by the said Isaiah Paine, j'r, this 23rd day of July, A. D. 1872.

[L. S.] DANIEL SHARP,
Commissioner for State of Michigan.

8½ STATE OF MICHIGAN,
County of Kent, ss:

The circuit court for the county of Kent, in the name of the people of the State of Michigan, to the sheriff of the county of Kent, greeting:

You are commanded to summon Oakes Ames, Oliver Ames, j'r, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3rd, to be and ap- [L. S.] pear before the circuit court of the county of Kent, at the court-house in the city of Grand Rapids, Michigan, upon the 6th day of August, A. D. 1872, then and there to answer unto Ichabod L. Quimby, in a plea of trespass on the case upon premises, damage twenty-five thousand dollars, which shall then and there be made to appear; and of this writ make due return.

Witness the honorable Birney Hoyt, circuit judge of the said circuit court, at Grand Rapids, this 16th day of July, A. D. one thousand eight hundred and seventy-two.

HOBART H. CHIPMAN, *Clerk.*

NORRIS & BLAIR,
Plaintiff's Attorneys.

9 STATE OF MICHIGAN:

The circuit court for the county of Kent.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, J'R, OAKES A. AMES, FREDERICK L. AMES, and OLIVER AMES, 3rd.

KENT COUNTY, *ss:*

Ichabod L. Quimby, of Grand Rapids, and said county, being duly sworn, says that he is the above-named plaintiff, and that a personal action, arising upon contract, has been commenced by the above-named plaintiff against Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick L. Ames, and Oliver Ames, 3rd, who are copartners under the firm-name of Oliver Ames and Sons, defendants above named, and non-residents of the State of Michigan and residents of the State of Massachusetts, in the circuit court for the county of Kent, by summons issued out of and under the seal of said court.

This affiant further says that the said Oakes Ames, Oliver Ames, j'r, Oakes A. Ames, Frederick L. Ames, and Oliver " , 3rd, de-
10 fendants, are justly indebted to the said plaintiff in the sum of eleven thousand dollars over and above all legal set-offs, and that said plaintiff is justly apprehensive of the loss of the same unless a writ of garnishment issue to Wilder D. Foster, of said city of Grand Rapids, Kent County and State of Michigan.

And that this affiant has good reason to believe, and does believe, that the said Wilder D. Foster has property, money, goods, chattels, credits, and effects in his hands, and under his control, belonging to the said Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3rd, and that said Wilder D. Foster is justly indebted unto the said Oakes Ames, Oliver Ames, j'r, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3rd, copartners as aforesaid, and that said indebtedness is now due.

(Signed) ICHABOD L. QUIMBY.

Subscribed and sworn to before me this 10th day of July, A. D. 1872.

C. M. MCLAREN,
Notary Public, Kent County, Michigan.

11 STATE OF MICHIGAN,
County of Kent, ss:

The circuit court for the county of Kent, in the name of the people of the State of Michigan, to the sheriff of the county of Kent, greeting:

Whereas Ichabod L. Quimby, as plaintiff, has commenced a personal action, arising upon contract, in the circuit court for the county of Kent, against Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3rd, as defendants, by summons issued out of and under the seal of said court, and has filed in the office of the clerk of said court the affidavit of the said plaintiff, stating, amongst other things, that he has good reason to believe, and does believe, that Wilder D. Foster, of the city of Grand Rapids, Kent County, Michigan, has property, money, goods, chattles, credits, and effects in his hands, and under his control, belonging to the said defendants, and that said Wilder D. Foster is justly indebted to the said defendants, and that said indebtedness is now due, and that said defendants are justly indebted to the said plaintiff in the sum of eleven thousand dollars over and above all legal set-offs, and that the said plaintiff is justly apprehensive of the loss of the same unless a writ of garnishment issued to the aforesaid Wilder D. Foster:

Now, therefore, you are hereby commanded to warn and summons the said Wilder D. Foster to appear before said court on Tuesday, the sixth day of August, A. D. 1872, to make disclosure in writing, under oath, to be filed with the clerk of said court, touching the liability of said Wilder D. Foster as garnishee of Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3d, the principal defendant, as charged in the said affidavit, and that said Wilder D. Foster thenceforth pay no money and deliver no property or effects to the said Oakes Ames, Oliver Ames, junior, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3rd, defendant in said action, until discharged.

And of this writ you shall make due return to the said circuit court on the sixth day of August next.

{ COPY OF SEAL. L. S. } Witness the Hon. Birney Hoyt, circuit judge, at the city of Grand Rapids, this sixteenth day of July, one thousand eight hundred and seventy-two.

HOBART H. CHIPMAN, *Clerk*,
By W'M H. VAN LEEWOREN, *Dept.*

STATE OF MICHIGAN,
County of Kent, ss:

I hereby certify and return that on the 16th day of July, A. D. 1872, in said county, I served the within writ upon Wilder D. Foster, the garnishee therein named, by showing the same to Wilder D. Foster, and at the same time delivering to Wilder D. Foster a true copy of said writ.

Dated this 16th day of July, 1872.

JESSE F. WYCKOFF,
Sheriff of said County,
By D. F. THURSTON,
Under Sheriff.

FEES: Service of writ, ; mileage, ; copies, $1.10.

12 To the within-named defendants:

Take notice that you, and each of you, are hereby required to appear and defend the suit commenced by summons, of which the an-

nexed is a true copy, within thirty days after service on you of copy of said summons, and copy of affidavit and writ of garnishment, with return of service endorsed thereon, of which the annexed are true copies, or default will be entered and judgment taken against you.

Dated Grand Rapids, July 18th, 1872.

NORRIS AND BLAIR,
Plaintiff's Att'ys.

13 The circuit court for the county of Kent.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, OAKES A. AMES, Frederick L. Ames, and Oliver Ames, 3rd.

SIR: Please to enter our appearance for the defendants in this cause.

Dated Aug. 26th, 1872.

Yours, &c.,

HUGHES, O'BRIEN & SMILEY,
Def'ts' Att'ys.

To. H. H. CHIPMAN, Esq., *Clerk.*

14 STATE OF MICHIGAN.

The circuit court for the county of Kent.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, OAKES A. AMES, Frederick L. Ames, and Oliver Ames, 3rd.

Assumpsit. Aug. 26, 1872.

In this cause, on motion of Hughes and O'Brien, defendants' attorneys, it is ordered that the appearance of the said defendants be, and the same is hereby, entered herein.

HUGHES AND O'BRIEN,
Defendants' Attorneys.

15 STATE OF MICHIGAN.

In the circuit court for the county of Kent.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, JUNIOR, OAKES A. Ames, Frederick Ames, & Oliver Ames, 3rd.

KENT COUNTY, *ss:*

To the circuit court for the county of Kent.

The petition of Oakes Ames, Oliver Ames, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3rd, respectfully represent that they compose the firm of Oliver Ames and Sons, doing business at North Easton, in the State of Massachusetts, and that they are the defendants in the above-entitled cause, impleaded by the names in the title above set forth; that they now are and at the time of the commencement of said

suit were severally citizens of the State of Massachusetts; that [illegible] plaintiff then was and now is a citizen of the State of Michigan; [illegible] the action in this cause is assumpsit commenced against them as non-residents under the provisions of the garnisher act of the State of
Michigan, a writ of garnishment having been issued against
16 Wilder D. Foster, of said Kent County; that the debt alleged to be due from defendants to plaintiff, as set up in the affidavit of plaintiff, is the sum of eleven thousand dollars.

That your petitioners are willing and ready to offer and give good and sufficient for their entering in the circuit court of the United States for the western district of Michigan, on the first day of its term next to be held, copies of all the processes in said suit, and also for their appearance in said cause in said court, at the same time.

Whereupon your petitioner prays that said security may be accepted, and that said cause may be removed to said circuit court of the United States for the western district of Michigan, for trial therein at the next term thereof, to be held district, and that this court proceed no further in said cause. And your petitioner will ever pray.

OAKES AMES.
OLIVER AMES, J'R.
OAKES A. AMES.
FREDERICK L. AMES.
OLIVER AMES, 3RD.

By HUGHES, O'BRIEN AND SMILEY,
Their Attorneys.

17 STATE OF MICHIGAN,
Wayne County, ss:

George V. N. Lathrop, of the city of Detroit, in said county and State, being duly sworn, deposes and says that he knows personally all the parties, plaintiff and defendants, in the above-entitled cause, and has known them for many years; that he has read the foregoing petition, and knows that the facts therein set forth are true.

GEORGE V. N. LATHROP.

Subscribed and sworn to before me this thirty-first day of July, A. D 1872.

D. BETHUNE DUFFIELD,
Notary Public, Wayne County, Mich.

18 Know all men by these presents, that we, D. Darwin Hughes, Thomas J. O'Brien, and Mitchel J. Smiley, of the city of Grand Rapids, in the county of Kent and State of Michigan, are jointly and severally held and firmly bound unto Ichabod L. Quimby, of the same place, in the penal sum of one thousand dollars, for which, well and truly to be paid unto the said Ichabod L. Quimby, his heirs, executors, administrators, and assigns firmly by these presents, sealed with our seals this 26th day of August, A. D. 1872.

The condition of this obligation is such, that if Oakes Ames, Oliver Ames, Oakes A. Ames, Frederick L. Ames, and Oliver Ames, 3rd, defendants in a suit now pending in the circuit court for the county of Kent, in the State of Michigan, in which the said Ichabod L. Quimby is plaintiff, and the persons above named are defendants, shall forthwith, and during the present term, or on the first day of the next session or term of the circuit court of the United States for the western district of
Michigan, enter copies of the process in such suit against the
19 said Oakes Ames, Oliver Ames, Oakes A. Ames, Frederick L.

Ames, and Oliver Ames, 3rd, and of all papers and proceedings in said circuit court, and shall enter the appearance of said Oakes Ames, Oliver Ames, Oakes A. Ames, Frederick L. Ames, and Oliver Ames, 3rd, in said circuit court of the United States, then this obligation to be void, and otherwise in full force and effect.

In witness whereof the said obligors have hereunto set their hands and seals this 26th day of August, A. D. 1872.

(Signed) D. DARWIN HUGHES. [L. S.]
THOMAS J. O'BRIEN. [L. S.]
MITCHEL J. SMILEY. [L. S.]

STATE OF MICHIGAN,
County of Kent, ss:

D. Darwin Hughes, Thomas J. O'Brien, and Mitchel J. Smiley, the sureties named in the foregoing bond *named*, being duly sworn, depose and say that they are residents of the State of Michigan, and are respectively worth the sum of one thousand dollars, over and above their just debts and liabilities, and exclusive of property exempt by law from execution.

(Signed) D. DARWIN HUGHES.
20 T. J. O'BRIEN.
M. J. SMILEY.

Subscribed and sworn to before me this 26th day of August, A. D. 1872.

(Signed) H. P. CHURCHILL,
Notary Public, Kent Co., Mich.

STATE OF MICHIGAN,
County of Kent, ss:

I certify that on this 26th day of August, 1872, before me, a notary public in & for said county, personally came D. Darwin Hughes, Thomas J. O'Brien, and Mitchel J. Smiley, to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same as their own free act and deed, for the uses and purposes therein mentioned.

(Signed) HENRY P. CHURCHILL,
Notary Public.

21 STATE OF MICHIGAN:

The circuit court for the county of Kent.

At a session of said court, held at the court-house in the city of Grand Rapids, in said county, on the twenty-sixth day of August, A. D. one thousand eight hundred and seventy-two:

Present, Hon. Birney Hoyt, circuit judge.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, OAKES A. AMES, Frederick L. Ames, and Oliver Ames, 3rd.

Upon reading and filing the petition of the above-named defendants herein for the removal of this suit into the circuit court of the United States for the western district of Michigan, in the sixth circuit, in pur-

suance of the laws of the United States relating to the removal of suits from the State courts, and upon filing the security offered by said defendants according to the requirements of said laws, and on motion of
Hughes, O'Brien and Smiley, attorneys for the said defendants,
22 (Norris & Blair, the attorneys for plaintiff, consenting,) it is hereby ordered that the said security be accepted, and that said suit be removed into the next circuit court of the United States to be held in said western district of Michigan, and that no further proceedings be had in said suit in this court.

BIRNEY HOYT,
Circuit Judge.

23 STATE OF MICHIGAN,
County of Kent, ss:

I, Hobart H. Chipman, clerk of the circuit court in and for said county, do hereby certify that the annexed and foregoing is a true and compared copy of the summons issued in the cause in the suit wherein Ichabod L. Quimby is plaintiff and Oakes Ames, Oliver Ames, j'r, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3rd, are defendants, and all other papers, rules, and orders connected with said cause, and of the whole thereof, as the same appears of record and on file in my office.

Witness my hand and seal of said court, at Grand Rapids, this 31st day of August, A. D. 1872.

[L. S.] HOBERT H. CHIPMAN,
Clerk as aforesaid.

24 UNITED STATES OF AMERICA:

The circuit court of the United States for the sixth circuit and western district of Michigan, as yet of the October term of said court, for the year A. D. 1872, to wit, of the 14th day of November, A. D. 1872.

WESTERN DISTRICT OF MICHIGAN, *ss:*

Ichabod L. Quimby, who is a citizen of the State of Michigan, plaintiff in this suit, by Norris and Blair, his attorneys, complains of Oakes Ames, Oliver Ames, j'r, Oakes A. Ames, Frederick L. Ames, and Oliver Ames, 3rd, defendants herein, who are all citizens of the State of Massachusetts, and have been summoned to answer said plaintiff in a plea of trespass on the case upon promises, for that whereas the said defendants, on the first day of June, in the year of our Lord one thousand eight hundred and seventy-two, at said western district, were indebted to the said plaintiff in the sum of twenty-five thousand dollars, lawful
money of the United States of America, for divers shovel-handles,
25 goods, wares, and merchandise, by the said plaintiff before that time then sold and delivered to the said defendants, at the special instance and request of the said defendants; and being so indebted to the said plaintiff the said defendants in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook & then and there fully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendants should be thereunto afterwards requested.

And whereas, also, the said defendants, afterwards, to wit, on the same day and year, and at the place aforesaid, were indebted to the said plaintiff in the sum of twenty-five thousand dollars, of like lawful money aforesaid, for so much money by the said defendants before that time had and received to and for the use of the said plaintiff; and

being so indebted to the said plaintiff, the said defendants in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully
26 promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendants should be thereunto afterwards requested.

And whereas, also, the said defendants, afterwards, to wit, on the same day and year, and at the place aforesaid, were indebted to the said plaintiff in the sum of fifteen thousand dollars of like lawful money for so much money before that time and then due and payable from the said defendants to the said plaintiff, for interest upon and for the forbearance of divers large sums of money before then due and owing from the said defendants to the said plaintiff, and by the said plaintiff forborne to the said defendants for divers long spaces of time before then elapsed, at the like special instance and request of the said defendants; and being so indebted, they, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and
27 truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested.

Nevertheless, the said defendants, although often requested, have not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendants have hitherto altogether refused, and still do refuse, to the damage of said plaintiffs of twenty-five thousand dollars; and therefore the said plaintiff brings suit, &c.

NORRIS AND BLAIR,
Atty's for Pl'ff.

28 In the circuit court of the United States for the western district of Michigan.

OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick L. Ames, Oliver Ames, 3d,
ads.
ICHABOD L. QUIMBY.

The clerk will please enter the appearance of the defendants in this cause by us as their attorneys.

HUGHES, O'BRIEN & SMILEY,
Def'ts' Att'ys.

To ISAAC H. PARRISH, *Clerk.*

29 The circuit court of the United States for the western district of Michigan.

OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick Ames, and Oliver Ames, 3rd,
ads.
ICHABOD L. QUIMBY.

And now comes the said defendants, by Hughes, O'Brien and Smiley, their attorneys, and demands a trial of the matters and things stated and set forth in the said plaintiff's declaration.

HUGHES, O'BRIEN AND SMILEY,
Att'ys for Def'ts.

To NORRIS AND BLAIR,
Pff's Att'ys:

Take notice, that on the trial of this cause the defendant' will give in evidence under the general issue above pleaded, and insist in their defense, that if the said plaintiff furnished to said defendant' any shovel-handles they were furnished under a contract or agreement dated, to wit, January 2d, 1865, and wherein and whereby the plaintiff
30 agreed to furnish 15,000 dozen long shovel-handles, to be of the best quality of and workmanship, for the then present year, at the price of $1.25 per doz., basing the said price on the then present price of gold, namely, $2.25.

That it was therein and thereby agreed that if the price of gold should go up or down that the price of said handles should be advanced or reduced accordingly, and it was agreed by said contract that no advances or reduction in the price of gold (25 per cent.) should change the price of handles unless it should remain at the advanced rates sufficiently long to effect the general price of merchandise.

That the said shovel-handles furnished in pursuance of said contract were not of the best quality of timber and workmanship for that year, and that thereby the defendant sustained great damage, and large quantities of said shovel-handles were entirely lost and of no value to said defendants.

And the said defendants will further show that afterwards, almost immediately thereafter, the price of gold aforesaid went down a large sum, of more than 25 per cent., to wit, $1.00, and remained at said reduced rate sufficiently long to effect the general price of mer-
31 chandise, and remained at said reduced rate from that time to the present time, and that thereby, by the terms of said contract, the said plaintiff was to furnish said shovel-handles at a greatly reduced price, to wit, at the sum of sixty cents per dozen, and said defendant only became liable to pay therefor the said price, to wit, sixty cents per doz. for the same.

That they did not comply either in quality of timber or in workmanship with the terms of said contract, and that the said plaintiff sustained great damage thereby, to wit, the sum of $5,000, which he will prove on the trial of said cause by way of recoupment and set-off, and ask to have judgement rendered in their favor. Therefore,

You will further take notice, that on the trial of said cause said defendants will further show under such general issue that if any shovel-handles were furnished them by the plaintiff they were furnished under a certain other contract of date, to wit, January 27, '66, between said plaintiff and said defendants, wherein and whereby the said con-
tracted and agreed to furnish the defendant', at Boston, Massachu-
32 setts, immediately on the 14th day of Oct., then commenced, 10,000 dozen of long shovel-handles, of number-one quality in material and manufacture, and equal in all respects to a number-one handle heretofore furnished by the said party of the first part to the parties of the second part, that is, by the said plaintiff to the said defendants; that therein and thereby the said defendants were to have the privilege of rejecting, as they had before that time rejected, all handles which would break in the process of bending.

That the said shovel-handles were to be furnished at the price and sum of $1.25 per dozen, as follows: $2,500 on or before the last of January, 1866, $2,500 on or before the 24th day of March, 1866, and $1,000 on or before the 1st day of April, 1866, and the balance of said price on the due or full delivery of all of said handles.

That the said plaintiff agreed thereby to pay interest at the rate of ten per cent. on the first three payments aforesaid, from the date of said respective payments until the delivery of the handles, to sufficiently equal in price *of* said several sums; and the said defendants will
33 show that the shovel-handles were delivered under said contract were not long shovel-handles of number-one quality in material and manufacture, and equal in all respects to number-one handles before that time furnished by said plaintiff to said defendants.

That they were greatly inferior in quality to the other before that time furnished by said plaintiff to said defendants as number-one handles, and that a large quantity of them, to wit, 10,000 doz. thereof, broke in process of bending; that they were thereby lost and of no value to the said defendants, and that by reason thereof they sustained great damage, to wit, $10,000, which they will claim by way of recoupment and set-off on said trial, and ask to have judgement rendered therefor in their favor.

They will further show that the said payments mentioned in said contract, and hereinbefore stated, were made by said defendant to the plaintiff, and that thereby he became liable to pay a large sum of money for interest at ten per cent. upon said payments from the time of said respective payments until the delivery of said handles sufficient
34 to equal in price said several sums, which the said defendants will ask to have set off at the trial.

You will further take notice that the said defendants will show, under said issue aforesaid, that if any shovel-handles were furnished them by the said plaintiff, they were furnished under a certain other contract between them and said plaintiff, dated, to wit, December 25, 1866, wherein and whereby the said plaintiff agreed to make and deliver to Oliver Ames and Sons, the said defendants, 25,000 doz. four-and-a-half-feet-long handles for shovels, of good quality white-ash timber, well made, and that would be suitable for good shovels, at and for the price of $1.25 per doz., and that for what handles were required and ordered by them, and forwarded to them by the plaintiff before April 20th, 1867, they would pay twelve and a half cents per dozen.

That for any money advanced to said plaintiff, the said plaintiff was to pay the said defendants six per cent. interest, and defendants were to accept his drafts for sixty cents per doz., and on the 25,000 dozen handles to be made during the year 1867, one-third, or $5,000, at thirty days, $4,500 at sixty days, and $5,500 at ninety days' sight, making
35 fifteen thousand dollars in all. And said defendant also agreed to allow said plaintiff to draw upon them upon said bills of lading for forty-five cents per dozen in addition to the sixty cents difference.

That therein and thereby the said Quimby was to pay the difference of two dollars and a half commission for accepting his drafts, and in settlement of the year's business, the balance to be struck on the account of the plaintiffs, as per the said agreement.

And the said defendants will show that the said handles, which were furnished under the said contract, were not four and a half feet long; that they were not of good quality of white-ash timber; that they were not well made, and that they were not suitable for good shovels.

That they were inferior in quality, and broke in bending. That thereby the defendants sustained great damage, to wit, $10,000, which they will recoup and set off on the trial of said cause, and ask to have judgement rendered therefor in their favor.

That they advanced large sums of money upon said contract to said plaintiff, and that thereby he became liable to pay them six per

36 cent. interest on such dues; that they accepted his drafts in large amounts, to wit, several of said drafts in the amounts of $5000 each, and for other large sums of money, whereby the said plaintiff became liable to pay them two and a half per cent. commission for accepting his drafts as aforesaid, in pursuance of the terms of said contract, which they will claim by way of set-off and recoupment upon said trial, and ask to have judgement rendered therefor in their favor.

HUGHES, O'BRIEN AND SMILEY,
Att'ys for Def'ts.

37 STATE OF MICHIGAN:

The circuit court of the United States for the western district of Michigan.

The circuit court for the county of .

OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick Ames, Oliver Ames, 3d, *ads.* ICHABOD L. QUIMBY.

The defendants above named, by Hughes, O'Brien & Smiley, their attorneys, come and demand a trial of the matters set forth in the plaintiff's declaration.

HUGHES, O'BRIEN & SMILEY,
Attorneys for Defendants.

Please to take notice, that the said defendants will, on the trial of this cause, insist upon and give in evidence under the general issue above pleaded, that before, and at the time of the commencement of this suit, the said plaintiff was, and still is, indebted to the said defendants in the sum of twenty-five thousand dollars, for the price and value of goods before then sold and delivered by the defendants to the plaintiff at his request; and in a like sum for the price and value of work then done, and materials for the same provided by the defendants for the plaintiff at his request; and in a like sum for the price and value of work then done by the defendant' for the plaintiff at request; and in a like sum for the money then lent by the defendants to the plaintiff at his request; and in a like sum for money then paid by the defendants for plaintiff at his request; and in a like sum for money then received by the plaintiff for the use of the defendants; and in a like sum for money then found to be due from the plaintiff to the defendants on an account stated between them; and in a like sum for the use of money then due from the plaintiff to the defendants, and by the defendants foreborne to the plaintiff at his request; which said several sums of money, or so much thereof as will be sufficient for that purpose, the said defendants will set off and allow to the plaintiff against any demand or demands of said plaintiff to be proved by him on said trial, and have the balance certified in their favor.

38 You will also please take notice that the defendants will prove under the general issue above pleaded, and insist in their defence, that they did not at any time within six years next before the commencement of this suit undertake or promise in the manner and form as the said plaintiff has in his declaration alleged and complained of against them.

Also, that if any such articles, materials, or stock as is mentioned in the said plaintiff's bill of particulars in this cause were ever furnished to the defendants, that such articles, materials, and stock were so furnished under and by virtue of a special express contract, by the terms of which such articles, materials, and stock were to be only of first-class quality in every respect; but that the said plaintiff failed to furnish the stock aforesaid according to such contract and agreement, and that said articles, materials, and stocks were in all respects inferior, and not according to the terms of said contract and agreement of the plaintiff, on account of which said failure on the part of the plaintiff the defendants suffered great loss and damage.

And the said defendants will seek to recoup, and do recoup, damages in this action on account of such failure on the part of said plaintiff, and on account of such breach of said agreement.

Dated December 24th, 1872.

Yours, &c.,

HUGHES, O'BRIEN & SMILEY,
Defendants' Attorneys.

To NORRIS & BLAIR,
Plaintiff's Attorneys.

The circuit court of the United States for the 6th circuit and western district of Michigan.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, J'R, OAKES A. AMES, Frederick L. Ames, and Oliver Ames, 3rd.

WESTERN DISTRICT OF MICHIGAN,
Kent County, ss:

Lyman D. Norris, being duly sworn, says that he is one of the attorneys for the plaintiff herein; that this cause was transferred from the Kent County circuit court to this court, and filed here on the 21st day of October last, being the first day of the October term of this court. That the defendants, by Hughes, O'Brien & Smiley, their attorneys, entered their appearance the same day in this court; that the plaintiff filed his declaration here and herein on the 14th day of November last, and on the same day served a true copy of such declaration on the defendants' attorneys. That on the 29th day of said November the defendants' attorneys served upon the plaintiff's attorneys a demand for a bill of particulars of the plaintiff's claim; that said bill of particulars was duly served upon the said defendants' attorneys on the 9th day of December instant; all which appears upon the calendar of the plaintiff's attorneys, and is, as deponent verily believes, correct and true.

That no plea or demurrer or notice of any defence has yet been filed by the defendan[illegible] attorneys in this cause, nor served upon plaintiff's attorneys, as also appears from said calandar, and as deponent verily believes to be true, and that this affidavit is made that the default of the defendants, for want of such filing and service of plea, demurrer, or notice of defense by said defendants, may be duly entered.

LYMAN D. NORRIS.

Subscribed and sworn to before me this 18th day of December, A. D. 1872.

HENRY P. CHURCHILL,
Notary Public, Kent Co., Mich.

The circuit court of the United States for the sixth circuit and ... district of Michigan.

OAKES AMES, OLIVER AMES, JR., OAKES A. Ames, Frederick Ames, and Oliver Ames, 3d, *ads.* ICHABOD L. QUIMBY.

GENTLEMEN: Please to take notice that the following is a bill of p... ticulars of the defendants' set-off in this cause, to wit:

1865.					
April 27.	To cash				[illegible]
" "	" "				2, [illegible]
June 27.	" "				6, [illegible]
July 20.	" acceptance July 13, 60 days				1, [illegible]
Sep. 27.	" cash				2, [illegible]
1866.					
Jan 31.	" "				2, [illegible]
Feb'y 24.	" acceptance due Ap'l 1, 1866				1, [illegible]
M'ch 7.	" cash				2, [illegible]
Sep. 19.	" "				2, [illegible]
Oct. 5.	" "				[illegible]
" 8.	" "				1, [illegible]
Dec. 25.	" "				1, [illegible]
1867.					
Jan. 22.	" acceptance Jan'y 21, 60 days				5, [illegible]
" 9.	" " " 9, 30 "				2, [illegible]
Feb'y 7.	" " Feb. 1, 90 "				2, [illegible]
" "	" " " 4 months				5, [illegible]
" "	" " " 11, 60 days				2, [illegible]
M'ch 13.	" " M'ch 13, 60 "				1, [illegible]
" 21.	" " " 21, 60 "				1, [illegible]
Ap'l 5.	" " Ap'l 5, 50 "				1, [illegible]
	Amount carried forward				[illegible]

43

	Amount brought forward				$50, [illegible]
Ap'l 22.	To acceptance Ap'l 22, 60 days				1, [illegible]
May 30.	" " May 24, 60 "				[illegible]
June 22.	" " Jan. 21, 60 "				1, [illegible]
" 29.	" " " 27, 60 "				1, [illegible]
July 22.	" " July 20, 60 "				1, [illegible]
Aug. 16.	" " Aug. 9, 60 "				1, [illegible]
" 29.	" " " 26, 60 "				2, [illegible]
Sep. 3.	" cash paid duties and expenses on handles from Canada				[illegible]
" 30.	" acceptance Sept. 25, 60 days				1, [illegible]
Nov. 6.	" " Oct. 26, 60 "				[illegible]
" 11.	" cash				[illegible]
" 12.	" " paid duties on handles from Canada				[illegible]
1868.					
p'l 30.	" acceptance Ap'l 24, 60 days				2, [illegible]
ne 24.	" " June 19, 60 "				1, [illegible]

Aug. 10.	To acceptance Aug. 3, 60 days		2,000
Oct. 12.	" " Sep. 28, 60 "		1,000
Nov. 10.	" cash paid duties on handles from Canada		751 43
Dec.	" acceptance due Dec. 13, 1868		3,000
	" cash paid freight on handles to Boston, received from you, as per freight bills as follows,:		
1865.			
June 2.	" cash paid freight to Boston		147 62
" "	" " " " " " "		147 62
" "	" " " " " " "		146 62
" 5	" " " " " " "		147 62
" "	" " " " " " "		147 59
" "	" " " " " " "		147 62
" "	" " " " " " "		147 62
" "	" " " " " " "		147 62
" "	" " " " " " "		147 62
" 6	" " " " " " "		147 62
" 9	" " " " " " "		130 52
	Amount carried forward		$73,412 00
44	Amount brought forward		$73,412 00
June 12.	To cash paid freight to Boston		31 48
Aug. 15.	" " " " " "		89 06
" "	" " " " " "		89 07
" 12.	" " " " " "		89 07
" "	" " " " " "		89 07
" 18.	" " " " " "		103 90
" 23.	" " " " " "		30 57
Sep. 22.	" " " " " "		1 61
" "	" " " " " "		13 38
1866.			
June 29.	" " " " " "		79 71
July 11.	" " " " " "		80 13
Aug. "	" " " " " "		151 44
" 13.	" " " " " "		147 34
" 16.	" " " " " "		215 23
" 24.	" " " " " "		120 02
" "	" " " " " "		120 02
" 31.	" " " " " "		120
Sep. 17.	" " " " " "		120
" 26.	" " " " " "		39 37
" 27.	" " " " " "		118 13
Nov. 29.	" " " " " "		126 56
1867.			
Jan. 17.	" " " " " "		136 30
" 23.	" " " " " "		136 30
" "	" " " " " "		136 30
Feb'y 27.	" " " " " "		162 30
M'ch 2.	" " " " " "		150 30
" 4.	" " " " " "		160 30
" 9.	" " " " " "		150 30
" 16.	" " " " " "		150 3
" 27.	" " " " " "		160 3

1868.		To cash paid freight to Boston		
Apl	8.	" " " " " "		
"	"	" " " " " "		
"	10.	" " " " " "		
"	11	" " " " " "		
		Amount carried forward		$77,
45		Amount brought forward		$77,
Apl	19.	To cash paid freight to Boston		
"	27.	" " " " " "		
"	"	" " " " " "		
May	25.	" " " " " "		
"	"	" " " " " "		
Jun.	11.	" " " " " "		
"	20.	" " " " " "		
"	22.	" " " " " "		
July	3.	" " " " " "		
"	"	" " " " " "		
"	6.	" " " " " "		
"	10.	" " " " " "		
"	11.	" " " " " "		
"	16.	" " " " " "		
"	26.	" " " " " "		
Aug.	3.	" " " " " "		
"	13.	" " " " " "		
"	21.	" " " " " "		
"	24.	" " " " " "		
"	27.	" " " " " "		
"	28.	" " " " " "		
"	29.	" " " " " "		
Sep.	7.	" " " " " "		
"	"	" " " " " "		
"	14.	" " " " " "		
"	20.	" " " " " "		
"	21.	" " " " " "		
Oct.	10.	" " " " " "		
"	17.	" " " " " "		
Nov.	9.	" " " " " "		
"	"	" " " " " "		
"	14.	" " " " " "		
1868.				
May	7.	" " " " " "		
"	9.	" " " " " "		
"	"	" " " " " "		
		Amount carried forward		$61,7
46		Amount brought forward		$61,7
June	2.	To cash paid freight to Boston		
July	31.	" " " " " "		
Aug.	1.	" " " " " "		
Sep.	26.	" " " " " "		
Nov.	3.	" " " " " "		151

Nov. 5.	To cash paid freight to Boston.....		151 26
" "	" " " " " " "		151 26
" "	" " " " " " "		153 07
" 24.	" " " " " " "		94 53
Dec. 4.	" " " " " " "		148
	" commission on advances made, as per agreement, from Dec. 25th, 1866, to Nov. 12th, 1867, @ 2½ %.....		946 27
	" commission for accepting drafts during year 1868, @ 2½ %.....		243 78
	" 66 months' storage on 681 dozen rejected handles, @ 1½ c. per dozen per month.....		974 19
			85,014 28
	" interest on above to date.....		40,000 00
			$125,014 28

Dated March 11th, 1873.
Yours, &c.,

HUGHES & O'BRIEN,
Def'ts' Att'ys.

To Mess. NORRIS & BLAIR,
Pff's Att'ys.

$83,150.04.

47 The circuit court of the United States for the western district of Michigan.

OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick Ames, Oliver Ames, 3d, *ads.* ICHABOD L. QUIMBY.

In this cause it is stipulated that the default entered therein be and hereby is set aside without costs, and without prejudice to the defendants.
Dated December 24, 1872.

NORRIS & BLAIR,
Att'y for Quimby.

48 UNITED STATES OF AMERICA:

The circuit court of the United States for the western district of Michigan.

ICHABOD L. QUIMBY, PL'FF,
vs.
OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick L. Ames, and Oliver Ames, 3d, def'd'ts.

And now comes the said Ichabod L. Quimby, plaintiff in the above-entitled cause, by Norris & Blair, his attorneys, and demands a trial thereof by jury.

NORRIS & BLAIR,
Att'ys for Pff.

48½ STATE OF MICHIGAN:

In the circuit court of the United States, 6th circuit and west. dist. of Mich., May 12th, A. D. 1873.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, OAKES A. AMES, Frederick L. Ames, and Oliver Ames, 3d.

The above-entitled cause will be brought on for trial at the next term of this court, notice having been served on the part of the plaintiff on Hughes & O'Brien, attorneys for the defendants, according to the statute and rules of this court. You will please place said cause on the issue-docket of this court for said term.

NORRIS & BLAIR,
Attorneys for Plaintiff.

To the clerk of said court.

49 The circuit court of the United States for the 6th circuit and western district of Michigan.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick L. Ames, and Oliver Ames, 3rd.

To the clerk of this court:

On reading and filing the affidavit of L. D. Norris, herewith, you will please enter the default of the defendants for want of filing and service of plea or demurrer by the said defendants to the declaration of the plaintiff heretofore filed and served.

Dated December 18th, 1872.

NORRIS & BLAIR,
Plaintiff's Att'ys.

50 The circuit court of the U. S. for the western district of Michigan.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick L. Ames, & Oliver Ames, 3rd.

It is hereby stipulated and agreed by the attorneys for the respective parties in the above-entitled cause, that Norris, Blair & Stone be substituted in place of Norris & Blair, as attorneys for plaintiff, and that on filing this stipulation with the clerk of said court an order of substitution may be entered.

NORRIS & BLAIR, *Att'ys for Pl'ff.*
HUGHES, O'BRIEN & SMILEY,
Att'ys for Def'ts.

51 The circuit court of the United States for the western district of Michigan.

ICHABOD L. QUIMBY
vs.
OAKE AMES ET AL.

In this cause it is stipulated & agreed that the amended notice of

recoupment and the original plea & notice may stand as and be considered as one plea.

Dated February 3d, 1875.

Att'ys for Pl'ffs.
HUGHES, O'BRIEN & SMILEY,
Att'ys for Def'ts.
NORRIS & BLAIR,
Att'ys for Pl'ff.

52 The circuit court of the United States for the western district of Michigan.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick Ames, & Oliver Ames, 3d.

To ISAAC H. PARRISH,
Clerk of said court:

SIR: Please issue a writ of error to remove this cause to the Supreme Court of the United States.

Yours, &c.,
HUGHES, O'BRIEN & SMILEY,
By E. W. WITHEY.

53 *Mess. O. Ames & Sons in ⅔ with I. L. Quimby.*

DECEMBER 1ST, 1874.

			D'r.	C'r.
1865.				
May 20	1,300	dos. No. 1, long handles, @ $1.25	1,625	
"	1,200	" " " " " "	1,500	
22	2,672	" " " " " "	3,340	
23	4,640	" " " " " "	5,800	
25	1,188	" " " " " "	1,485	
July 29	3,578	" " " " " "	4,472 50	
"	909	" " " " " "	1,136 25	
"	120	" 6-foot telegraph spades, @ 1.75	210	
	15,607	dos.	19,568 75	
Ap'l 27	Balance of ⅔			834 38
"	Cash			2,500
June 27	"			6,000
Sept. 13	Draft			1,600
27	Cash			2,500
Oct. 17	Freight			2,143 90
	(Across the face:) 73,586 dos.			15,578 28
1865.				
Oct. 17	Balance		39,990 47	
1866.				
June 9	750	dos. No. 1, long handles, @ $1.25	937 50	
25	754	" " " " " "	942 50	
July 14	750	" " " " " "	937 50	
19	750	" " " " " "	937 50	

				Dr.	Cr.
	20	750	doz. No. 1, long handles, @ $1.25	937 50	
	25	750	" " " " "	937 50	
	26	750	" " " " "	937 50	
Aug.	1	750	" " " " "	937 50	
	9	750	" " " " "	937 50	
	11	750	" " " " "	937 50	
	14	750	" " " " "	937 50	
	29	750	" " " " "	937 50	
Sept.	5	1,200	" " " " "	1,500	
		10,204	doz.	12,755 47	
	1866.				
Jan'y	31	Cash			2,000
M'ch	7	"			2,000
Ap'l	1	"			3,000
Sep.	19	"			1,000
Oct.	4	"			600
	8	"			1,000
	8	Freights			2,000
	8	Interest on advance of $6,666.66, @ 10 %			333
	"	302 doz. handles, @ 62½ c			188
					12,611 47
		Balance carried forward		4,133 79	
54	1866.				
Oct.	17	Balance bro't forward		4,133 79	
Nov.	2	750	doz. No. 1, long handles, @ $1.37½	1,031 25	
Dec.	20	1,406	" " " " "	1,932 25	
	"	696	" " 2, " " " 68 c	476 76	
		2,856	doz.	7,573 05	
Nov.	29	Freights			188 25
Dec.	25	Cash			3,000
	1867.				
Jan'y	17	Freights			188 25
	23	"			375 00
					3,563 25
	1867.				
Jan'y	23	Balance		4,009 80	
Feb'y	2	750	doz. " 1, long handles, @ $1.37½	1,031 25	
	16	752	" " " " "	1,034	
	18	750	" " " " "	1,031 25	
	20	750	" " " " "	1,031 25	
	26	750	" " " " "	1,031 25	
M'ch	5	750	" " " " "	1,031 25	
	9	750	" " " " "	1,031 25	
	11	750	" " " " "	1,031 25	
	15	750	" " " " "	1,031 25	
	20	750	" " " " "	1,031 25	
	21	750	" " " " "	1,031 25	
Ap'l	6	1,500	" " " " "	2,062 50	
	"	600	" " " " "	825	
	13	1,146	" " " " "	1,575 75	
May	13	750	" " " " @ $1.25	937 50	
	29	750	" " " " "	937 50	
June	8	750	" " " " "	937 50	
	10	750	" " " " "	937 50	
	18	750	" " " " "	937 50	
	24	1,200	" " " " "	1,500	

Mess. O. Ames & Sons in % with I. L. Quimby—Continued.

				D'r.	C'r.
	29	750	doz. No. 1, long handles, *a* $1.25	937 50	
	July 1	750	" " " " " " "	937 50	
	5	1,000	" " " " " " "	1,250	
	9	750	" " " " " " "	937 50	
	22	750	" " " " " " "	937 50	
	30	1,000	" " " " " " "	1,250	
		21,448	Amounts forward	34,986 84	
	1867.				
55		21,448	doz. Amounts bro't forward	34,986 84	
	Aug. 8	1,590	" No. 1, long handles, *a* $1.25	1,990	
	10	1,200	" " " " " "	1,500	
	17	1,251	" " " " " "	1,563 75	
	26	885	" " " " " "	1,106 25	
	Sep. 3	1,000	" " " " " "	1,250	
	5	750	" " " " " "	937 50	
	10	750	" " " " " "	937 50	
	28	705	" " " " " "	881 25	
	Oct. 2	767	" " " " " "	958 75	
	22	3,091	" " " " " "	3,863 75	
	"	447	No. 2	279 37	
		33,814	doz	49,464 96	
	Jan'y 9	Draft, 30 days, due Feb'y 11th			5,000
	21	" 60 " " March 24th			5,000
	Feb'y 1	" 90 " " May 5th			5,000
	22	" 4 months from Feb'y 1st, due June 4th			5,000
	11	" 60 days, due April 15th			2,000
	Mar. 13	" 60 " " May 15th			1,667
	21	" 60 " " 23rd			1,000
	Ap'l 5	" 60 " " June 7th			1,000
	22	" 60 " " 24th			1,200
	May 24	" 60 " " July 26th			600
	June 21	" 60 " " Aug. 22nd			1,300
	27	" 60 " " 29th			1,000
	July 20	" 60 " " Sept. 21			1,200
	Aug. 9	" 60 " " Oct. 11			1,000
	26	" 60 " " 28			2,000
	Sept. 25	" 60 " " Nov. 27			1,000
	Oct. 26	" 60 " " Dec. 28			767 12
	Nov. 11	Cash			100
	"	Duties paid on Canada handles			1,053 78
	"	Freights paid			5,686 92
	"	2½ % commission on $35,000 advanced			500
	"	Interest " " " *a* 6 %			396 16
	"	257 doz. handles charged as No. 1, allowed as No. 2, *a* 62½			160 62
					43,651 80
		Balance carried forward		5,813 36	
56	1867.				
	Nov. 11	Balance bro't forward		5,813 36	
	1868.				
	Ap'l 22	504	doz. #1, long handles, *a* $1.25	630	
	"	2,000	" " " " " "	2,500	
	May "	800	" " " " " "	1,000	
	July 11	850	" " " " " "	1,062 50	
	21	850	" " " " " "	1,062 50	
	Sep. 10	800	" " " " " "	1,000	
	12	800	" " " " " "	1,000	
	Oct. 6	3,747	" " " " " "	4,683 75	

Mess. O. Ames & Sons in ⅓ with I. L. Quimby.—Continued.

			D'r.	C'r.
	6	269 doz. ₱3, long handles, @ 62½ c	168 13	
	31	555 " ₱1, " " " 1.55	860 75	
	"	68 " ₱2, " " " 62½ c	42 50	
		11,943 doz	13,069 48	
1868.				
Ap'l	24	Draft, 60 days, due June 22th	.....	2,000
June	19	" " " " Aug. 21st	.....	1,000
Aug.	3	" " " " Oct. 5th	.....	2,000
Sep.	28	" " " " Nov. 30th	.....	1,000
Oct.	26	" " " " Dec. 12th	.....	2,000
	"	Duties paid on handles	.....	751 48
	"	Freights "	.....	1,000 00
				11,419 48
1868.				
Dec.	1	Balance	2,237 80	
	"	To interest on balance ⅓ year 1865, @ 7 % ..	2,547 05	
	"	" " " " " " 1866, " " ..	81 70	
	"	" " " " " " 1867, " " ..	869 16	
	"	" " " " " " 1868, " " ..	1,018 34	
			12,714 24	

57 The circuit court of the United States for the western district of Michigan.

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick Ames, Oliver Ames, 3d.

In this cause it is stipulated between the attorneys for the respective parties that trial by jury be and hereby is waived.
May 26, 1873.

HUGHES, O'BRIEN & SMILEY,
Def'ts' Att'ys.
NORRIS & BLAIR, *Pl'ff's Att'ys.*

(Indorsed:) U. S. circuit court, west dist. of Mich'n. Ichabod L. Quimby vs. Oakes Ames et al. Stipulation. Filed February 3d, 1875. Isaac H. Parrish, clerk. Norris & Blair, att'ys for pl'ff. Hughes O'Brien & Smiley, att'ys for def'ts.

58 The circuit court of the United States, western district of Michigan.

ICHABOD L. QUIMBY
vs.
OLIVER AMES, J'R, OAKES A. AMES, Frederick Ames, & Oliver Ames, 3d.
} Assumpsit. Oct. term, 1874.

Norris & Blair, att'ys for pl'ff.
Hughes, O'Brien & Smiley, att'ys for def't.

Finding by the court, April 15, 1875.

A jury was waived by written stipulation, and cause tried by the court. Oakes Ames, who was originally a defendant, having deceased, the proper suggestion was made, and by consent the cause proceeded to trial against the other defendants.

Plaintiff has for many years been engaged in the business of manufacturing shovel-handles, and has for a long time furnished large quantities annually to defendants, who are the leading shovel manufacturers of the United States. Plaintiff brings this action to recover for balance claimed against defendants for shovel-handles furnished in the years 1865, 1866, 1867, and 1868. His declaration is upon the common courts with a bill of particulars. Defendants plead the general issue,
59 give notice of special difenses and set-off, with bill of particulars.

There were written contracts for the years 1865, 1866, & 1867, and in each years there were more handles delivered than called for by the contract furnished on written or verbal orders.

Plaintiff claims to recover under the common courts on the ground that the contracts have been fully performed on his part. The evidence shows that the transactions between the parties under the contracts of 1866 has been fully settled and adjusted. Outside of the contract of 1865, which presents a question requiring the court to give it construction, there is little else in the case than to make an accounting between the parties.

1865.—The contract of 1865, being first in order of time, is that to which I give consideration for the purpose of determining its meaning and effect. In the first instance it covers most of the transactions between the parties of that year, and is in the following words:

N. EASTON, *Jan'y 2d*, 1865.

M'r Ichabod L. Quimby agrees to furnish us and we to take from him 15,000 dozen of long shovel-handles, to be of the best quality of
60 timber and workmanship, for the present year, the price to be ($1.25) one dollar and twenty-five cents per dozen, basing the price on the present price of gold, $2.25.

If the price of gold goes up or down then the price of handles shall be advanced or reduced accordingly. But it is understood that no advance or reduction of the price of gold of 25 per cent. shall change the price of handles unless it shall remain at the advance or reduced rate sufficiently long to effect the general price of merchandise.

(Signed) J. S. QUIMBY.
OLIVER AMES & SONS.

Plaintiff furnished and delivered the full complement of shovel-handles stipulated in the contract to defendants at their place of business in northeastern Massachusetts, and 488 dozen in excess of the requirements of the contract; 9,812 dozen were delivered May 20, 22, & 23d, when gold was 1.31; 1,188 dozen were delivered May 25, gold 1.36; and the balance, 4,488 dozen, were delivered July 29th, when gold was 1.45.

Plaintiff also furnished defendants 120 dozen 6-feet handles, known as telegraph spade-handles, at request of defendants, at $1.75 per dozen, not affected by the contract as to price.

Defendants claim that by terms of the contract they are liable
61 only for 72½ cents per dozen for the handles delivered May 20 to 23d inclusive, when gold was $1.31; for 75½ cents per dozen for handles delivered May 25, when gold was $1.36; and for 80½ cents pe

dozen for handles delivered July 29th, when gold was $1.45. On the other hand, plaintiff claims that the reduction in the price of gold at the time the several lots of handles were delivered having been 25 per cent. and more, the price of handles was not affected or changed from the contract price of $1.25 per dozen, unless the reduced price of gold remained "long enough to affect the general price of merchandise," and that inasmuch as defendants have failed to show that any effect was produced on the general price of merchandize by the fall in gold, he is entitled to one dollar & twenty-five cents per dozen.

Plaintiff claims that he was prepared to show upon the trial, had defendants offered evidence on the subject, that the general price of merchandize was not affected by the reduction in the price of gold at the time the handles were delivered.

The standpoint for considering the contract is the time when it was made, and the rule of construction is to determine from the lan-
62 guage the intention of the parties. Evidently the parties did not anticipate a permanent change in the price of gold during 1865 equal to or greater than 25 per cent., while they did anticipate some fluctuation in the currency-value of gold. At the same time they recognized the possibility that gold might be advanced or reduced 25 per cent. or more. They, therefore, provided in the contract for both contingencies as affecting the price or value of handles at the time of delivery. The price of gold was then $2.25; this was made the basis for the price of handles at $1.25 in currency, and it was agreed that any change in the price of gold should correspondingly affect the price of handles.

But it was seen that sudden and great fluctuations in the gold market, carrying the price of gold up or down 25 per cent. or more, might seriously & injuriously affect one party or the other, unless some provision was made which would protect them alike against such possible sudden changes. Hence there followed the provision that "No advance or reduction of the price of gold of 25 per cent. shall change the price of handles, unless it shall remain at the advanced or reduced rate sufficiently long to affect the general price of merchandize."

63 The evidence shows that at such delivery of shovel-handles under the contract the price of gold had fallen more than 25 per cent. from $2.25, the price when the contract was made.

Accordingly it is my opinion that it was incumbent on defendants to prove upon the trial that the reduction in the price of gold had at the time of delivery of handles affected the general price of merchandize in order for them to claim a corresponding reduction in the price of handles, or to reduce their price below $1.25. There being no such proof, and none attempted, my opinion is the plaintiff is entitled to have $1.25 per dozen for handles. Such seems to me to be both the legal and equitable construction of the contract and the rule of evidence which controlls the rights of the parties.

If by reason of no effects having been produced upon the general price of merchandize from the fall in the price of gold at the time the handles were delivered, the Mess'rs Ames could realize for their shovels, in the manufacture of which Quimby's handles were used, the same or as good a price when gold was at $1.31 as when it was $2.25,
it is not seen why they should, in view of the terms of the con-
64 tract, have a reduction in the price of plaintiff's handles to 72½ cents per dozen, or any other amount; whereas, if a reduction of 25 per cent. or more in the price of gold had the effect to reduce the general price of merchandize, and consequently of defendants' shovels,

there would be seen abundant reason why they should pay a less price for plaintiff's handles than when gold was $2.25. Exactly the reverse would be the correct view as to price of handles if the advance in the price of gold of 25 per cent. or more had taken place, & its effect was to advance the general price of merchandize.

On the other hand, if the upward or downward movement of the price of gold had been 25 per cent. or more, and had produced an effect upon the general price of merchandize, and thereby advanced or reduced the cost of the production of handles to plaintiff, there would be seen a reason why plaintiff should have a corresponding increase or reduction in the price received for his handles.

As, in my opinion, such were the views held by the parties when making the contract, considered from the terms expressed therein and the subject-matter involved, I have no hesitation in finding as a
65 matter of law that plaintiff is entitled to $1.25 per dozen for shovel-handles delivered under the contract of 1865.

I find that plaintiff fully performed the contract of 1865 by delivering 15,000 dozen handles of the kind & quality named therein and 488 dozen handles in addition, all worth the contract price except 55 dozen of the 488 dozen, which were worth 50 cents per dozen.

15,433 dozen handles, at $1.25		$19,291 25
55 dozen " " 50c.		27 50
		$19,318 75
120 dozen telegraph spade-handles, at $1.75		210 00
		$19,528 75
I find defendants paid to plaintiff on account of handles in 1865 the sum of	$13,434 38	
For freight on handles	2,143 90	
		15,578 28
Leaving as the balance unpaid		$3,950 47
Plaintiff is entitled to interest at 6 per cent. on this balance from January 1, 1866, being 93¼ months to this day, April 15, 1875		$2,202 94
Due to plaintiff for handles in 1865 & interest		$6,153 41

1866.—I find defendants have paid plaintiff in full satisfaction for all handles delivered under the contract of January 27th, 1866, or otherwise, in that year.

66 1867.—I find that a contract was made between the parties December 25, 1866, by which plaintiff was to furnish to defendants 25,000 dozen shovel-handles of good quality white-ash timber, well made, that should be suitable for good shovels, for which defendants were to pay $1.25 per dozen, delivered at defendants' place of business in Massachusetts. For what handles defendants required & ordered before April 20, 1867, defendants were to pay $1.37½ cents per dozen, of which contract the following is a copy:

N. EASTON, *Dec.* 25, 1866.

Memorandum of agreement made this day between I. L. Quimby, of New Baltimore, Michigan, and Oliver Ames & Sons, of N. Easton, Mass.

I. L. Quimby agrees to make and deliver to Oliver Ames & Sons twenty-five thousand dozen of 4½ feet long handles for shovels, of good

quality of white-ash timber, well made, and that shall be suitable for good shovels, for which we are to pay him one dollar and twenty cents per dozen. And for what handles we require and order to be forwarded before Ap'l 20, 1867, we shall pay 12½ cents per dozen extra. For advances made we to charge M'r Quimby six per cent. interest, and accept his drafts for sixty cents per dozen on the
67 twenty-five thousand dozen handles to be made and delivered during the year 1867; one-third, or $5,000, at 30 days; one-third, or $5,000, at 60 days; and one-third, or $5,000, at 90 days' sight, making $15,000 in all.

We also agree to allow M'r Quimby to draw on us upon receipt of bills of lading for 45 cents per dozen in addition to the 60 cents advanced to him, making 105 cents per dozen, M'r Quimby to pay us 2½ per cents. commission for accepting his drafts. And in settlement of the year's bussiness the balance to *struct* and acc't balanced, as per the foregoing memorandum.

(Signed) OLIVER AMES & SONS.
I. L. QUIMBY.

[5-c't stamp]

I find the business of the year 1867 resulted in plaintiff's delivering to defendants at their place of business in Massachusetts thirty-six thousand nine hundred & twenty-four dozen shovel-handles, of which 25,000 was under the contract, the balance being on verbal or written orders. I find that plaintiff fulfilled the contract on his part by delivering 25,000 dozen shovel-handles of good quality of white ash timber, well-made, & suitable for good shovels.

I find that plaintiff forwarded, prior to April 20, 1867, by order
68 of defendants, 5,000 dozen handles, which were received by defendants, & for which, according to the contract-price, plaintiff was to have one dollar & thirty-seven & a half cents, amounting to $6,850. I find of the balance of handles delivered by plaintiff to defendant, being 31,924 dozen, one-eighth, 3,990 dozen, were second quality, worth 62½ cents per dozen, amounting to $2,493.75; and that the remaining quantity, 27,924 dozen, were first quality and worth $1.25 per dozen, amounting to the sum of $34,917.50; making the total value of all the handles delivered by plaintiff to defendants in 1867 $44,261.25.

I find that defendants paid plaintiff on account of such handles, at various times during the year 1867, the sum of	$37,140 78
Also, they paid for plaintiff duties	709 86
And freights	6,095 82
Making the sum of	$43,946 46
I find defendants entitled to have interest on advances to pl'ff averaged	396 16
Also, 2½ commission on $35,754.12 drafts of plaintiff on defendants, accepted by them	873 85
	$44,216 47

I find a balance on the business of the year 1867 due from defendants to plaintiff of $44.78, on which plaintiff is entitled to interest at 6 per cent. from January 1st, 1868, to this day, April 15, 1875, being seven years three and a half month', amounting to $19.58, making the balance at this date, for the business of 1867, due plaintiff $64.36.

69 I find defendants accepted plaintiff's drafts during the year

1867 at the times following, and which were duly honored and paid by them, viz:

January 9th,	acceptance	at	30	days		$5,000	
January 21st,	"	"	60	"		5,000	
February 1st,	"	"	90	"		5,000	
February 1st,	"	"	4	mo's		5,000	
February 11th,	"	"	60	days		2,000	
March 13th,	"	"	60	days		1,687	
March 21st,	"	"	60	"		1,000	
April 5th,	"	"	60	"		1,000	
April 22nd,	"	"	60	"		1,200	
May 24th,	"	"	60	"		600	
June 21st,	"	"	60	"		1,300	
June 27th,	"	"	60	"		1,000	
July 20th,	"	"	60	"		1,200	
August 9th,	"	"	60	"		1,000	
August 26th,	"	"	60	"		2,000	
September 25th	"	"	60	"		1,080	
October 26th	"	"	60	"		767	12
						35,754	12

Sept 3d.—Defendants also paid duties & expenses for plaintiff	286	60
Nov. 11.—They paid plaintiff cash	100	00
Nov. 12.—They paid for plaintiff duties	709	86
They also paid freight on handles	6,095	82
Add 2½ commission on $35,754.12	873	85
Interest on advances, average	396	16
	$44,216	47

70 1868.—I find there was no contract for the business of 1868, but that plaintiff furnished to defendants at their place of business in Massachusetts 10,739 dozen shovel-handles, of which one-eighth, or 1,343 dozen, were second quality and worth 62½ cents per dozen, amounting to $838 75

The balance, 9,397 dozen, were first quality, worth $1.25 per dozen, amounting to $11,786 25

Making a total sum of $12,585 00

I find defendants paid plaintiff on account of said handles, by several payments during the year $9,000

Also paid duties for pl'ffs & freight 751 43 / 1,667 06

Making a gross sum of $11,418 49

I find that defendants owed plaintiff at the close of the year 1868 the sum of $1,166.51, and that defendants are liable to plaintiff for interest thereon, at six per cent. per annum, *for* January 1, 1869, to this day, April 15, 1875, being six years three & a half months, amounting to $441.34, which, added to the balance found as due and owing January 1st, 1869, makes one thousand and six hundred and seven & $\frac{85}{100}$ dollars.

Finally, I find that plaintiff is entitled to recover and have judgement

against defendants in the sum of seven thousand eight hundred seventy-five and 42/100 dollars.

70½ Judgement will be entered according to this finding.

S. L. WITHEY,
Dist. Judge.

APRIL 15, 1875.

71 The circuit court of the United States for the western district of Michigan.

ICHABOD L. QUIMBY
vs.
OLIVER AMES, J'R, OAKES A. AMES, Frederick Ames, & Oliver Ames, 3d.

And now comes the said defendants, by Hughes, O'Brien & Smiley, their attorneys, and except to the finding of the court in the following particulars, to wit:

1st. To the finding of said court that, to entitle the defendants to a reduction in the price of handles furnished in the year 1865, under the contract of Jan'y 2, 1865, corresponding with the reduction of the price of gold, it was necessary for them to prove that gold remained at the reduced price long enough to effect the general price of merchandise.

2nd. To the finding, as matter of law, that, under the contract of 1865, Jan'y 2nd, the plaintiff was entitled to recover for handles furnished under that contract & during that year one dollar &

72 twenty-five cents per dozen when gold was at the prices respectively of $1.31, $1.36, and $1.45, at the times respectively, viz. May 20, 22, & 23, May 25th and July 29th, when the handles were delivered.

3rd. To the finding, as matter of law, that the plaintiff was entitled to recover interest upon unsettled yearly balances found due by the court from the defendants to the plaintiff, to wit, interest on $3,306.47 from January 1st, 1866, to April 15th, 1875; interest on $44.78 from Jan'y 1st, 1868, to April 15th, 1875, and interest on $1,166.51 from January 1st, 1869, to April 15th, 1875.

4th. To the finding that def'ts were only entitled to $306.16 for interest upon advances for the year 1867 under the contract covering the transaction of that year.

HUGHES, O'BRIEN & SMILEY,
Att'y for Def'ts.

73 UNITED STATES OF AMERICA,
Western District of Michigan, ss:

At a session of the circuit court of the United States for the western district of Michigan, continued and held at the city of Grand Rapids, on the fifteenth day of April, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth:

Present, the honorable Solomon L. Withey, district judge.

Among the proceedings then and there had were the following, to wit:

ICHABOD L. QUIMBY
vs.
OAKES AMES, OLIVER AMES, J'R, OAKES A. Ames, Frederick Ames, & Oliver Ames, 3d.

This cause having been brought on for a hearing before the court

upon stipulation waiving the jury, and the court having heard the proofs and allegations of the parties and the arguments of counsel, find that the defendants did undertake and promise in manner and form as the plaintiff hath alleged in his declaration.

And the court assess the plaintiff's damages, over and above his costs and charges, at the sum of seven thousand eight hundred and twenty-five dollars and sixty-two cents.

It is therefore considered by the court that the said plaintiff do recover against the said defendants the said sum so assessed by the court as aforesaid, together with his costs and charges to be taxed, and that he have execution thereof.

S. L. WITHEY.

74 UNITED STATES OF AMERICA, *ss:*

To Ichabod L. Quimby, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Michigan, wherein Oakes Ames, Oliver Ames, jr, Oakes A. Ames, Frederick Ames, and Oliver Ames, 3rd, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 7th day of July, in the year of our Lord one thousand eight hundred and seventy-five.

S. L. WITHEY,
U. S. Dist. Judge.

75 UNITED STATES OF AMERICA,
Western District of Michigan, ss:

, being duly sworn, deposes and says that he served a true copy of the within citation by delivering it personally to Ichabod L. Quimby, the within-named defendant in error, on the day of , A. D. 1875.

Sworn to & subscribed before me this day of , A. D. 1875.

Notary Public in and for Kent County, Michigan.

(Indorsed:) In the Supreme Court of the U. S. Oakes Ames et al., pl'ffs in error, vs. Ichabod L. Quimby, def't in error. Citation.

We hereby admit due personal service of a copy of the within citation. July 22, 1875.

NORRIS, BLAIR & STONE,
Att'ys for Def't.

HUGHES, O'BRIEN & SMILEY,
Att'ys for Pl'ffs in Error.

Received & filed this 23rd day of July, A. D. 1875, 5.25 p. m.
ISAAC H. PARRISH, *Clerk.*

76 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the sixth judicial circuit and western district of Michigan, greeting:

Because in the record of proceedings, as also in the rendition of the

judgment in the said court before you [illegible]
iff, and Oakes Ames, Oliver Ames, Jr, [illegible]
and Oliver Ames, 3rd, defendants, a[illegible]
the great damage of the said defendants, as by [illegible]
and it being fit that the error, if any there [illegible]
corrected and full and speedy justice done to the parties [illegible]
this behalf:

You are hereby commanded, if judgment be therein given, that [illegible]
under your seal, distinctly and openly, you send the record [illegible]
ceedings aforesaid, with all things concerning the same, to the [illegible]
Court of the United States, together with this writ, so [illegible]
77 have the same at Washington on the second Monday of [illegible]
next, in the Supreme Court to be then and there held, that the [illegible]
record and proceedings aforesaid being inspected, the Supreme [illegible]
may cause further to be done therein to correct that error what of right [illegible]
and according to the laws and customs of the United States should be [illegible]
done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court, and the seal of said circuit court, at Grand Rapids, this 7th day of July, A. D. 1875.

[SEAL.] ISAAC H. PARRISH, *Clerk.*

Allowed.

S. L. WITHEY,
U. S. Dist. Judge.

77½ (Indorsed:) Supreme Court of the U. S. Oakes Ames et al, pl'ffs in error, vs. Ichabod L. Quimby, def't in error. Writ of error. Hughes, O'Brien & Smiley, atty' for pl'ffs in error.

78 WESTERN DISTRICT OF MICHIGAN, *ss:*

I, Isaac H. Parrish, clerk of the circuit court of the United States for the western district of Michigan, do hereby certify that I have compared the above and foregoing with the original files and records in said cause, and that the same is a true copy thereof and the whole of such originals.

Witness my official signature and the seal of said court this 22d day of Sept., A. D. 1875.

[SEAL.] ISAAC H. PARRISH, *Clerk.*

Clerk's fees, 230 fol's	$23 00
Certificate & seal	50
	23 50

(Indorsement on cover:) No. 146. Oakes Ames, Oliver Ames, Jr, Oakes A. Ames, Frederick Ames, & Oliver Ames, 3rd, plaintiffs in error, vs. Ichabod L. Quimby. W. Michigan C. C. U. S. Filed 29th September, 1875.

Supreme Court

OF

THE UNITED STATES.

OCTOBER TERM, 1877.

No. 140.

OAKES AMES, OLIVER AMES, Jr., OAKES A. AMES, FREDERICK AMES, and OLIVER AMES, 3d,

Plaintiffs in Error,

vs.

ICHABOD L. QUIMBY,

Defendant in Error.

Brief and Argument

FOR PLAINTIFFS IN ERROR.

HUGHES, O'BRIEN & SMILEY,

Counsel for Plaintiffs in Error.

Dygert, Bull & Rice, Legal and Commercial Printers, Grand Rapids, Mich.

1877.

Ames et al. vs. Quimby.

STATEMENT OF THE CASE

The plaintiffs in error residing at North Easton, Massachusetts, were engaged in the year 1865, and subsequently, in manufacturing shovels. The defendant in error (plaintiff below) resided in Michigan, and was engaged in the manufacture of shovel-handles.

On the second day of January, A. D., 1865, the parties entered into a contract in writing in the words and figures following, viz:

N. Easton, January 2nd, 1865.

Mr. Ichabod L. Quimby agrees to furnish us and we to take from him 15,000 dozen long shovel-handles, to be of the best quality of timber and workmanship, for the present year, the price to be ($1.25) one dollar and twenty-five cents per dozen, basing the price on the present price of gold, $2.25.

If the price of gold goes up or down, then the price of handles shall be advanced or reduced accordingly. But it is understood that no advance or reduction of the price of gold of 25 per cent shall change the price of handles unless it shall remain at the advanced or reduced rate sufficiently long to affect the general price of merchandise.

I. L. Quimby.

Oliver Ames & Sons.

Under this contract the plaintiff Quimby furnished the fifteen thousand dozen of shovel-handles, and some more during the year 1865.

The handles were all delivered in the months of May and July of that year. 9,812 dozen were delivered May 20th, 22d and 23d, when gold was worth $1.31. 1,185 dozen were delivered May 25th, when gold was worth $1.36, and 4,448 dozen were delivered July 29th, when gold was worth $1.45. (See p. 24, printed record.)

The price of gold having been reduced more than 25 per cent. between the time of making the contract and the time of the delivery of the handles, the defendant claimed a corresponding reduction in the price of handles, which would bring those delivered from May 20th to 23d inclusive down to 72½ cents, those delivered May 25th down to 75½ cents, and those delivered July 29th down to 80½ cents per dozen.

The Court, however, decided that the defendant was not entitled to this reduction in price, and claimed that the defendant should have proved that the price of merchandise was changed by the change in the price of gold.

The Court construed this contract to mean that the price of handles should go up or down with gold if the price of gold was reduced or advanced less than 25 per cent. whether the price of merchandise was affected thereby or not, but that the price of handles should not follow the price of gold if it changed more than 25 per cent. unless the price of merchandise also changed. (See printed record, p. 25.)

The defendant duly excepted to the decision and ruling of the Court in giving such a construction to said contract. (See p. 29, printed record.)

Upon the business of the year 1865 the Court found that the defendants were indebted to the plaintiff in the sum of $3,950.47. with interest $2,202.94, making a total of $6,153.41. In making this appear he gave the plaintiff credit for $1.25 per dozen for all the handles delivered in 1865. (See page 26, printed record.)

If the Court was wrong in the construction which he placed upon the contract, then it is evident that his finding of facts does not support the judgment rendered. (See pp. 28 and 29, printed record.

ASSIGNMENT OF ERRORS.

I.

The Court erred in finding as matter of law that to entitle the defendants to a reduction in the price of handles furnished in the year 1865 under the contract of January 2nd, 1865, corresponding with the reduction in the price of gold it was necessary for the defendants to prove that gold remained at the reduced price long enough to affect the general price of merchandise. (See printed record, pp. 24 and 25.)

II.

The Court erred in finding as matter of law that under said contract of January 2d, 1865, the plaintiff was entitled to recover for handles delivered under that contract and during that year $1.25 per dozen when gold was at the prices respectively of $1.31, $1.36 and $1.45 at the times respectively, May 20th, 22d and 23d, May 25th and July 29th, when the handles were delivered.

III.

The said Court erred in finding as matter of law upon the facts found that the plaintiff was entitled to recover the sum of seven thousand eight hundred and twenty-five dollars and sixty-two cents.

HUGHES, O'BRIEN & SMILEY,

Attorneys for Plaintiffs in Error.

BRIEF AND ARGUMENT.

MAY IT PLEASE THE COURT:—

We claim that the learned Judge who tried the case in the Circuit Court erred in the construction which he put upon the contract of July 2, 1865, and entirely misconceived the object the contracting parties had in view and their intention in making the contract.

It is a well known historical and commercial fact that after the civil war prices of property went up until they became grossly ficticious and far beyond healthy or anything like intrinsic values, and that the reason of these unhealthy and unnatural prices was that in common commercial parlance the price of gold was very high; but in fact the legal-tender currency of the country was greatly depreciated. A dollar in gold, which must always be the true standard, would buy from $2 to $3 in currency, and as currency was used in commercial transactions, produce and manufactured articles sold at prices approximating to the price of currency as compared with gold. As the currency depressed, or in other words, the price of gold advanced, prices advanced in the market and the price of property kept pace with the price of gold.

It is believed that the artificial prices thus put upon property was perhaps the largest and most active element in producing the panic from which it is hoped the country is now recovering.

When parties entered into extensive contracts of an executory nature they foresaw at a glance that if gold should go down to par, when a dollar in gold would buy only a dollar in currency, that they could not pay the same price for property as they could when a dollar in gold would buy two dollars and a quarter in currency.

It therefore became common practice to make such contracts as the one in question providing that any fluctuation in gold sufficiently large to affect prices should affect the contract price.

This was the state of things in January, 1865, when this contract was made.

At that time one dollar in gold would buy two dollars and a quarter of currency, such as payment on this contract could be made with; and the price to be paid on that basis was one dollar and a quarter; but the contract provides that if the price of gold goes up or down then the price of handles shall be advanced or reduced accordingly. The plain meaning of this provision is that if the price of gold goes up—that is, if more than $2.25 in currency can be bought with one dollar in gold—the price of handles shall go up in the same proportion, but if the price of gold goes down—that is, if less than $2.25 in currency can be bought with one dollar in gold—then the price of handles shall be reduced in the same proportion.

In other words, it means that when gold goes up the price of handles shall go up, and when gold goes down the price of handles shall go down. This is the general rule fixed by the contract by which to determine the price, but the contract contains an exception to this rule:

"No advance or reduction of the price of gold of 25 per cent. shall change the price of handles unless it shall remain at the advanced or reduced rate sufficiently long to affect the general price of merchandise."

The reason of this exception is apparent and throws a flood of light upon its meaning. It can scarcely be called an exception, for it is in perfect harmony with the general rule.

Practically a variation of a few cents in the price of gold would not affect the price of property in the market, and as the intention of the parties was to follow the fluctuations in the price of property they make this provision, that a slight variation in gold shall not affect the contract price; and that a variation of 25 per cent. should not affect it unless the variation affected prices in fact.

The plain meaning of this proviso is that a variation of 25 per cent. or under, should not affect the price unless proof was made that it had changed market prices in fact; but if a change of more than 25 per cent. took place, then the price of handles was to change accordingly. No proof that the market was affected was required by the contract in such a case for the plain reason that so large a variation in gold must affect prices, while a slight change might not.

This we insist is the true interpretation of the contract, and it is in harmony with its manifest theory.

When gold was $2.25 handles were to be $1.25; now when the first lot was delivered gold had gone down to $1.31. This is all a dollar in gold would buy of currency against the $2.25 when the price was to be $1.25 for handles. It is the plainest proposition that can be stated that

Ames could not afford to pay the same price as before, and the contract plainly provides for just such a contingency.

The opinion of the learned Judge who tried the case (Record, p. 25) is open to just criticism.

He says it is evident the parties did not anticipate a permanent change in gold equal to 25 per cent., while they did anticipate some fluctuation.

This is certainly a mistake. The parties are proved to have expected a permanent change of 25 per cent. or more, for they have taken careful pains to provide in the contract for just such a change, as fully as they have for any other.

The learned Judge says again that the 25 per cent. clause in the contract was inserted so as to protect the parties from injury by the fluctuation of gold; and his argument is that this was to be accomplished by providing that it should not affect the price of handles without proof that it affected the general market.

If this was the object of the parties, it would have been fully accomplished by leaving out the whole provision, so that no change in gold should affect the price.

This, however, was not the manner in which the parties protected themselves. They did it by providing that a change of more than 25 per cent. in the price of gold should change the price proportionately.

The position assumed by the learned Judge, and upon which he decided the case, leads to this result logically. A change of less than 25 per cent. in the price of gold would, under the contract, change the price of handles without any proof; but a change of more than that would

not. This is too unreasonable to be adopted for a single moment.

It is claimed the gold agreement was for the protection of the parties, and that a change of one per cent. in price of gold would change the price of handles proportionately. In such a case the effect of the change in prices would not be perceptible and the parties would need no protection. On the other hand it is claimed that a change of 25 per cent. or more in gold, which would certainly affect prices in the market, would not change the price of handles without proof of change in general prices. In this case the parties would need protection by a change of price as already argued, and yet it is said they could not get that protection without making proof that they needed it.

Such a construction makes the contract provide the absurdity of protecting us when we do not need protection, and of refusing it when we do need it, unless we make proof, which may be inconvenient, of a fact which is perfectly manifest.

The learned Judge says that evidently the parties did not anticipate a permanent change in the price of gold equal to or greater than 25 per cent. This cannot be gathered from the contract because they provided therein for every change that could happen. Nor could it be well argued from the history of the times, because the parties had already seen changes of nearly three hundred per cent., and there was every prospect of a change of more than twenty-five per cent. As matter of fact it did change within four months from the making of the contract nearly one hundred per cent. From what fact, then, could the learned

Judge, who decided the case, conclude that the parties did not anticipate such a change?

In the contract the parties use this phrase: "But it is understood that no advance or reduction of the price of gold of 25 per cent. shall change," etc.

Now it is evident that they did not mean that a change of *precisely twenty-five per cent.* in the price of gold should not change the price of handles unless, etc. They either meant that a change of less than 25 per cent. should not affect the price of handles, or that a change of more than 25 per cent. should not change the price of handles unless it also changed the price in the market.

The learned Judge who tried the cause construed the contract as though there had been inserted in it, before the words twenty-five per cent., the words *more than*, while we contend that it should be construed as though the words *less than* were inserted in the same place.

After declaring generally that any change shall effect the price, how absurd it seems that the parties should, in the next sentence, say that a change of five per cent. should affect the price of handles, yet a change of twenty-five or more should not unless it also changed the price of merchandise. Would not the price of merchandise be more likely to be affected by a great change than by a small one?

The parties recognized the fact by their contract that a change in the price of gold would naturally change the price of merchandise. They also knew that a change as great as 25 per cent. would *necessarily* change the price of merchandise, but that a slight change or variation within a range of 25 per cent. might not.

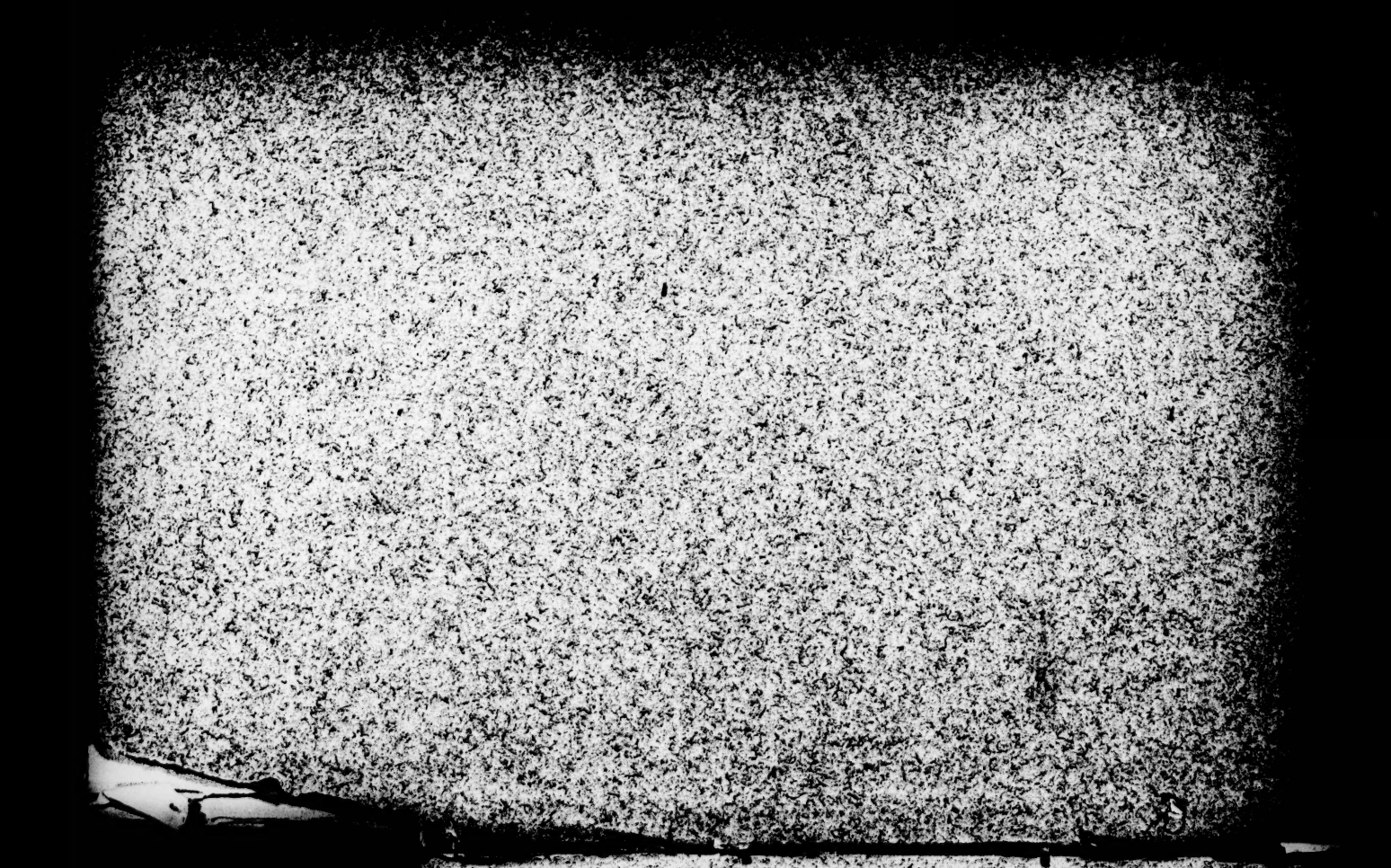
The construction which the Court put upon this contract would put the parties to proof when they had contracted that none should be needed, where the extent of the change in gold put beyond dispute the change in the price of candles, and require no proof where the insignificance in the change in gold left it in doubt whether it had changed the price of merchandise also.

We submit that the parties had in view the general proposition stated in the contract, that a change in gold would affect the price of merchandise, and while they fully recognised this, they could at the same time see that there might be slight changes and fluctuations in the gold market, or even sudden changes, not exceeding 25 per cent., which would not make any change in the general market on merchandise. Gold might go up or down 10 or 15 or 20 per cent. one day, and back again within the next day or week, and the general price of merchandise not be affected, and neither party to this contract would be injured unless it remained so long enough to change general prices. But if so great a change as 25 per cent. should take place in gold, it was evident to both parties that merchandise would necessarily be affected.

The whole case turns upon the construction which is to be put upon the contract of January 2d, 1865. The Court below put a construction upon it which we could not believe to be correct after carefully examiming the reasons which he gave for his decision. The case does not admit of much argument, because it would seem too plain for argument. A statement of the case is sufficient. We are not aware of any authority that could throw any light upon the case. The only rule applicable is the one which requires the Court to ascertain the intention of the parties. The Court

below fully recognized this principle, but we insist that he did not, in his decision, give effect to the true intention of the parties as expressed in the contract.

HUGHES, O'BRIEN & SMILEY,
Counsel for Plaintiffs in Error.



SUPREME COU

OF THE

UNITED STATE

OCTOBER TERM, 1877

OAKES AMES,
OLIVER AMES, jr.,
OAKES A. AMES,
FREDERICK AMES, and
OLIVER AMES, 3d.,
Plaintiffs in Error.

vs.

ICHABOD L. QUIMBY,
Defendant in Error.

ERROR TO W. DIST. OF MICH.

Points for Defendant in Error.

L. D. NORRIS,
Counsel for Defendant in Error.

Rogers Job Printing, Grand Rapids, Mich.
November, 1877.

SUPREME COUR

OF THE

UNITED STATES

OCTOBER TERM, 1874.

OAKES AMES,
OLIVER AMES, JR.,
OAKES A. AMES,
FREDERICK AMES, and
OLIVER AMES, 3d.,
Plaintiffs in Error.

vs.

ICHABOD L. QUIMBY,
Defendant in Error.

In error to the Circuit Court of the U. S. for the Western District of Michigan. Filed here Sept. 29, 187

Points for Defendant in Error.

There is but *one* question for this Court, in this record, which is:

I.

Does the finding of facts, [R. pp. 24 to 29,] support the judgment, (R. p. 30,) rendered April 15, 1875, for $7,825.62 for the Deft in Error?

1. "There have been no exceptions to rulings, in the trial."

2. The finding is special.

3. Under the statute, of March 3, 1865, [13 Stat. at Large, 501,] this court is authorized to review—"the de-"termination of the sufficiency of the facts found to "support the judgment," and they "*are authorized to ex-*"*amine no other question*"

21 Wallace, 307,

A case from the same Circuit and presented by the same attorneys, as in this Record.

True, four exceptions—three, touching legal conclusions, and one to a finding of a fact, are sent up in the Record (p. 29.) The exception paper is without date, shows no filing in the Court below, and there is no Bill of Exceptions, to give it *status* in the case.

Insurance Co. vs. Tweed, 7 Wall, 51.
Norris vs. Jackson, 9 Ib., 127-8.
Jennisons vs. Leonard, 21 Ib., 307.

II.

And the Court below truly finds (R. p. 24, folio 59,) "outside of the contract of 1865, * * * there is "little else in the case, than *to make an accounting* be-tween the parties."

This contract of 1865, (R. p. 24, folio 60,) is the ... *mortuum* of the entire *controversy*, and *the* point of ...

A. Upon whom (Plff. or Deft, below) rested the ... den, of showing, that the rise in currency value, (... in the contract, the going *down* of gold) "remained ... changed rate" SUFFICIENTLY LONG TO EFFECT THE ... ERAL PRICE OF MERCHANDISE?"

1. *Common sense* would reply—the *burden* should ... upon him who claimed the *benefit*. If (to use the ... lar, but incorrect idea, of the contract) because of ... going up (above 25 per cent.) and staying up, the ... tiff (below) should claim an increase in the price of ... handles, *he* should show the *general* price of merchan... affected—increased. And if the defendants (below) ... its fall, claimed a decrease in price, then upon ... should fall the burden of showing the general pri... merchandise affected—decreased. So, and not other... both parties would in turn, hold the *affirmative* or ... issue.

Bostwick vs. Caruthers, 1 Term, R. 649.
Stewart vs. Ashley, 34 Mich. 189.

This is elementary. It is Greenleaf's 3d Rule of Ev... dence. "The obligation of proving any fact lies upo... "the party who *substantially* asserts the *affirmative* ... "the issue." It is the rule of the Roman Law—"*Ei* ... "*cumbit probatio qui dicit, non qui negat.*"

In their *pleadings*, the defendants so understood t... rule, and *assumed* this *burden* (R. p. 11, folio 30) in th... notice, under the general issue. "The defendants ...

give *in evidence* and insist in their defense, * * * and the said defendants will further *show*, that afterwards, almost immediately thereafter, the price of gold aforesaid went down a large sum, more than 25 per cent., to-wit: $1.00, *and remained at said reduced rate, sufficiently long, to effect the general price of merchandise*, etc." (R. p. 11, folio 30, 31.)

2. The *truth* is the general price of merchandise was not affected. The contract bore date Jan. 2, and was fully performed July 29. (R. p. 24, folio 60.)

In January and February, there was no change of 25 per cent., and generally, stock and material—merchandise—then bought and on hand, would be *held* without reduction, sales or no sales, for at least four or five months.

3. There is *no* finding, as to how *long*, the reduced gold quotations stood, at any one figure. It was May 20, 22 and 23, $1.31: May, 25, $1.36, and July 29, $1.45. (R. p. 24, folio 60.)

The defendants below, in putting in evidence, the currency gold quotations, seemed, from the finding, to have confined their proof to the *single* days of delivery, hence they gave no data to the Court below, upon which he could find—*how long it remained*, at the reduced rate—one of the essential elements in determining an effect on the general price of merchandise.

4. Truth is, the currency gold rate, at *no* time, was a factor in the dealings of the parties. In '67 price of handles was $1.25, same as '65. In '68 same. (R. pp. 26 and 27,) and yet on *no* day in 1867 or '68 was gold quoted *above* $1.48½.

III.

The Court below found the plaintiff was entitled to interest, upon balance due, at the *close* of each year, and *should* legally have found interest from the date of delivery. Thus the contract of '65 was *fully performed* on the 29. (R. p. 24, folio 60,) and the money then due, but the Court let them keep it five months without interest. Defendants below paid in full for the delivery of '66. (R. p. 26, folio 65.) The delivery of '67 was nearly all settled, only $44.78 unpaid. The delivery of '68 was less, and the Court finds "that the defendants (below) owed plaintiff (below) at the close of 1868, $1,166.51. (R. p. 28, folio 70.) Money due and *owed* draws interest.

Consider that the Court allows to defendants average interest, and com's at 2½ per cent., not alone *on advances*, but upon what were in reality payments, (R. p. 28,) to the amount of $1,270.01; and the hardship of paying 6 per cent. on money found *due and owing*, is not apparent.

This is all there is of this Record.

By a writ of error to this Court, a *delay*, at 6 per cent. interest, results to the defendants since April 15, 1875. Suit began July 16, 1872. (R. p. 1.)

Is it just and legal—upon such a trivial question—to simply *affirm* the judgment?

Ought it not to be—with damages for delay?

E. D. NORRIS,
Counsel for Defendant in Error.

IV.

Counsel for defendant in error has been favored with a copy (on exchange) of the argument of the counsel for plaintiffs in error, and finds it based on the *construction* of the gold contract of 1865—solely. This is *matter of law.* It is also such an argument, as would not have been made to the court below, being in all its parts in the teeth of the plea and notice of the plaintiff in error. (R. p. 11, folio 30.)

However, it concedes to defendant in error the validity of his judgment, *unless* this Court should be of opinion that the court below has not found *facts* sufficient to support its judgment.

And the argument states the question (on page 5) as follows: "If the court below was *wrong* in the construc. "tion which he placed upon the contract of 1865, (R. "page 24) *then* it is evident his finding of facts does not "support the judgment."

That is to say: this finding of facts is not the true finding that should and would have been found, if the court had not *erred* in *matter of law*, in the construction of the written contract. And although we have no legal exception in the record to this *erroneous* illegal construction, and cannot, therefore, ask this court to review it, yet, we propose to reach our end by asking this court to rule (1.) that the *legal construction* of the contract *was erroneous*, though not excepted to; (2.) that if the court below had not made this error, he would have found for the plaintiff in error, instead of, as he did, for the defendant in error.

Or, stating it in another way: the court below has *found facts sufficient to support its judgment*, but, if it has not made an error in law (that we do not legally complain of) it could not have found such sufficient facts.

Finding, Matters of Law.

The Court below (R., p. 26, folio 65) says: "I have no "hesitation in finding, *as matter of law*, that plaintiff is "entitled to $1.25 per dozen for shovel handles delivered "under the contract of 1865." (*No legal exception below, and none here.*

Again, (R., p. 24, folio 59) "Outside of the contract "of 1865, which presents a question requiring the Court "to give it *construction*, there is little else than to make "an accounting." (No exception.)

Again, (R., p. 25, folio 63) "*In my opinion* * * it "was incumbant on defendants to prove upon the trial, "that the reduction in the price of gold, had at the time "of delivery of handles, affected the general price of "merchandise in order for them to claim * * to re-"duce their price below $1.25." (No exception.)

"There being no such proof, and none attempted, *my* "*opinion* is, the plaintiff is entitled to have $1.25 per "dozen for handles." (No exception.)

"Such seems to me to be both the *legal* and equitable "*construction* of the contract and the rule * * which "controls the rights of the parties." (No exception.)

Then comes reasoning of the Court, tending to show its legal construction of the contract, to be also equitable,

and tending to remove it, so construed, from the class of gambling contracts—wagers—on the rise and fall of currency values.

Finding, Matters of Fact.

Pleadings. "Declaration, common counts with bill of "particulars. Plea. General issue, with notice of spe- "cial defences * * with bill of particulars."

Facts. "There were written contracts for 1865, 1866 "and 1867, and in each year more handles delivered "than called for by the contract—furnished on written "or verbal orders."

"Plaintiff claims to recover under common counts, on "the ground that the contract had been fully performed "on his part." (R. p. 24, folios 58–'9.)

Contract of 1865.

Contract found and recited: "Plaintiff furnished and "delivered the full complement of shovel handles stipu- "lated in the contract, to defendants, at their place of "business in North Easton, Massachusetts, and 488 dozen "in excess of the requirements of contract—9,812 dozen "delivered May 20th, 22d, and 23d, when gold was $1.30; "1,188 dozen May 25th, gold $1.36; and the balance, "4,488 dozen, were delivered July 29th, when gold was "$1.45. Plaintiff also furnished defendants 120 dozen "6. feet handles, * * at the request of defendants, at "$1.75 per dozen, not affected by the contract, as to "price." (R. p. 24, folios 59, 60, and 61.)

"Evidently the parties did not anticipate a permanent

"change in the price of gold during 1865, equal to or "greater than 25 per cent., while they did anticipate "some fluctuation in the currency value of gold." (R. p. 25, folio 62.)

"But it was seen that sudden and great fluctuations in "the gold market, carrying the price of gold up or down, "25 per cent. or more, might seriously and injuriously af- "fect one party or the other, unless some provision was "made, which would protect them alike against such "possible sudden changes—hence there followed the "provision—'no advance or reduction of the price of "gold, of 25 per cent., shall change the price of han- "dles, unless it shall remain at the advanced or reduced "rate, sufficiently long to affect the general price of "merchandise.'" (R. p. 25, folio 62.)

And the Court further find, as matter of fact, that: "*Such were the views held by the parties* when making the "contract, considered from the terms expressed therein, "and the subject-matter involved." And the Court below might have added in the *light* of the evidence given before me in the cause. (R. p. 26, folio 64.)

Again, the court find.

"I find that plaintiff fully performed the contract of "1865, by delivering 15,000 dozen handles of the kind "and quality named therein, and 488 dozen handles in "addition, *all worth* the contract price, except 55 dozen "of the 488 dozen, which were worth 50 cents per dozen."

" 15,433 dozen handles, at $1.25	$19,291.25
" 55 " " " 50 cts.....	27.50
	$19,318.75
120 dozen telegraph spade handles, at $1.75	210.00
	$19,528.75

and after deducting payments, and computing, and adding interest, the Court add and find—" *due to plaintiff for* " *handles in* 1865, *and interest*, $6,153.41."

Contract of 1866.

" I find defendants have paid plaintiff in full." (R., p. 26, folio 65.)

Contract of 1867.

" I find * * balance * * for business of 1867, " *due* plaintiff $64.36." (R., p. 27, folio 68.)

1868, no contract.

" I find that defendants owed plaintiff, at the close of " 1868, the sum of $1,166.51," * * adding interest *—" makes $1,607.85." (R., p. 28, folio 70.)

" Finally, I find that plaintiff is entitled *to recover*, and " have judgment against defendants, in the sum of $7,- " 825.62." (R., p. 28, folio 70.)

made up as follows:

Contracts of 1865.	$6,153.41
" " 1867.....	64.36
Business " 1868.....	1,607.85
	$7,825.62

It would *seem* that *facts are found* sufficient to support the judgment!

Most certainly the defendants' counsel knew that upon such a record as this, nothing but the sufficiency of the facts found to support the judgment, could be considered here—because, as has been stated before—he was the counsel for the plaintiffs in error, in the case of *Jennisons* vs. *Leonard*, 21 Wall., 307, where the *precise* point was ruled.

He must have been aware, that his so called exceptions to matter of law, were not in *shape* to be considered here, because such had been the ruling of this Court, as we have shown, prior to the cases of *Phœnix Insurance Company of Brooklyn* vs. *Laniers*, and *Kern et al.* vs. *Champith et al.*, decided at this October Term. Such has always been the rule of the Supreme Court of his own State, based upon its rules of practice; that no decision of points of law of *nisi prius* Courts, would be reviewed on writ of error, except the record show that the rulings were *excepted* to, and such exceptions were certified as "settled and allowed"—A rule of simple justice and due courtesy to the inferior Court. Knowing these truths, he seeks under cover of an unsupported *claim*, that the facts found do not support the judgment, to question a ruling of law, the legal construction of a contract not legally excepted to. (Plaintiffs in error's brief, p. 5.)

Were it necessary, in *this* record, to the defence of the Court so assailed, it were easy to show the fallacy of a construction that holds, that under this contract of 1865, a change in currency value of less than, and *up to*, 25

per cent., needs *proof* that it had so remained, long enough to affect the price of general merchandise, while $25\frac{1}{100}$ per cent. change, needed *no* such proof.

Counsel for plaintiff in error, in *this* Court, do not discover and consider the true *governing term of* the contract. It was not the CHANGE in currency value, but it was its REMAINING at its advanced or reduced rate *sufficiently long* to affect the general price of merchandise.

This fallacious construction was, however, calculated for the meridian of Washington, as sufficiently appears in the record, and brief of plaintiff in error. In the brief (p. 12) it says: "The learned judge who tried the cause, "construed the contract as though there had been in- "serted in it before the words, twenty-five per cent., the "words *more than*; while we contend that it should be "construed as though the words *less than* were inserted "in the same place." [The *italics* are in the brief.]

Turning now to the record, we find that in the Court *below* the defendants (plaintiffs in error) give notice under their plea of the general issue (R., p. 11, folios 29, 30, and 31), "That on the trial of this cause, the defend- "ants will give in evidence, under the general issue "above pleaded, *and insist in their defense*, * * that "afterwards—almost immediately thereafter" (the date of the contract of 1865) "the price of gold aforesaid, "went down a large sum, of MORE THAN twenty-five per "cent., to wit, $1, and remained at said reduced rate "*sufficiently long* to effect the general price of merchan- "dise, and remained at said reduced rate from that time "to the present time, *and that thereby, by the terms of*

"*said contract*, said plaintiff was to furnish said shovel "handles at a greatly reduced price, to wit, at the sum "of sixty cents per dozen."

It was, then, *their* construction of their contract that the Court below adopted; but *here*, in *this* Court, they repudiate this construction, so clearly derived from their own pleadings.

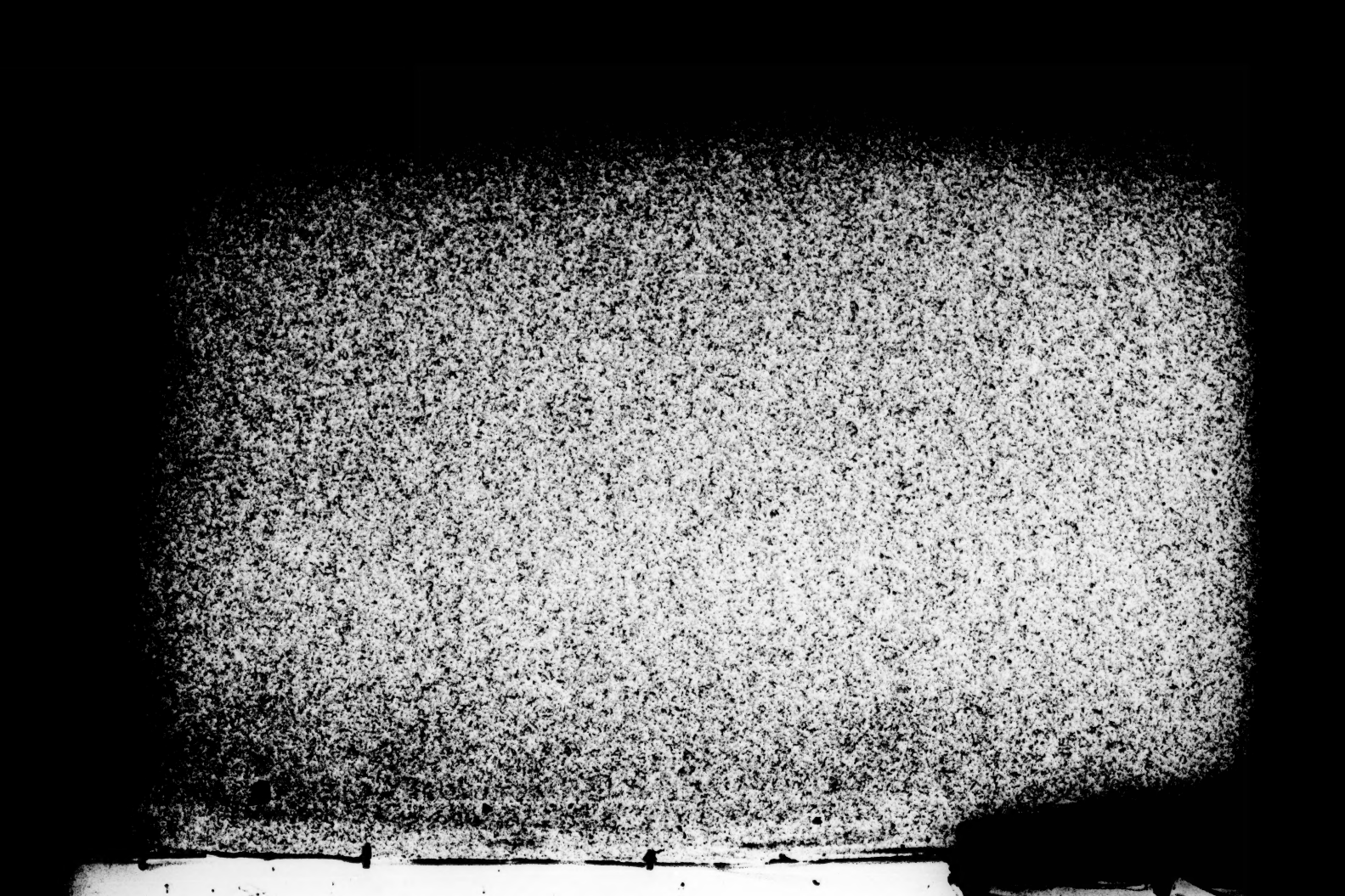
There are two pleas and two notices in the record (pp. 10, 11, 12, and 18), but the Court will observe (R., p. 19, folio 51), that by stipulation "the amended notice "of recoupment, and the original plea and notice may "stand as, and be considered as, one plea."

The rate of interest allowed by the Court below, was the Massachusetts' rule of six per cent, though in Michigan the rate may be ten per cent, which is the usual rate. By the writ of error and the consequent delay, the defendant in error has lost per annum on his judgment, certainly four per cent, which, from its date, April 15, 1875, to December 15, 1877, would amount to over $835, and this the plaintiffs in error have gained or saved, and they appear to know the value of the use of money, for they have allowed to them six per cent interest and two and a half per cent. commission. (R., p. 27 and findings.)

It results that the writ of error is advantageous to the plaintiff in error even, if the judgment should be affirmed—only.

In the light of the record, as illuminated by the argument of counsel for plaintiffs in error, we contend that the writ was sued out for delay merely; and that the

single point made, or that can be made,—the *facts* found do not support the judgment—is frivolous and insincere, and that the result usual in such cases ought to follow.

L. D. NORRIS,

Counsel for Defendant in Error.